

















**SHANGHAI :**  
**ITS MUNICIPALITY AND THE CHINESE**





# SHANGHAI: Its Municipality and the Chinese

BEING THE HISTORY OF THE SHANGHAI MUNICIPAL COUNCIL  
AND ITS RELATIONS WITH THE CHINESE,  
THE PRACTICE OF THE INTERNATIONAL MIXED COURT, AND  
THE INAUGURATION AND CONSTITUTION OF THE  
SHANGHAI PROVISIONAL COURT

BY A. M. KOTENEV

*A Companion Volume to "Shanghai: Its Mixed Court and Council"*  
*by the same Author*

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**To**  
**THE STRANGERS**

*whose energy and belief in the ultimate victory of principles of  
humanity and civilization has not been shaken by distress  
and danger this monograph is humbly dedicated.*

**[ALL RIGHTS RESERVED]**

*My profound thanks are due to Messrs. A. M. Preston and R. W. Davis whose inspiring directions and invaluable suggestions during preparation of manuscripts for printer helped me to complete this work.*

*I am also deeply indebted to Mr. J. E. Wheeler, Chief Clerk of the Shanghai Provisional Court and former Registrar of the International Mixed Court, who never refused to assist me with his experience in regard to the local administrative affairs.*

ANATOL M. KOTENEV.

*January 1st, 1927  
Shanghai.*





## PREFACE

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It is not an easy task for a contemporary writer to follow the rapid trend of political events in China. The swinging of China's historical pendulum is so violent that it threatens to overturn, within a few months, constitutions established by the legal acts and precedents of scores of years.

In fact, the political and social events of 1925 and 1926 in China have raised such problems in the administration of the foreign settlements in general, and in that of the International Settlement of Shanghai in particular, that every attempt at analysis presents almost insurmountable difficulties.

However, the demand for information concerning the status of the Shanghai Municipality and the native administration of Justice in the Settlement after the events of 1925, and 1926, compels the author to take up this task and to complete his preceding work "Shanghai: Its Mixed Court and Council," bringing it, as closely as possible, up-to-date. Thus, the present book, in spite of its different title, forms practically the second volume of "Shanghai: Its Mixed Court and Council," and, as in that work, the author will confine himself entirely to bare facts and their legal analysis, leaving the reader to form his own judgment upon the steps taken by the various Foreign and Chinese bodies in adjusting the problems of administration in the Settlement. He will strictly adhere to the system adopted in the above-cited work, carefully separating facts based on documentary and other unimpeachable evidence from his own deductions, to which it will be necessary to resort in order to fill up the gaps in historical evidence.

Perhaps in the opinion of a great many people interested in modern China the subject of the entire work will at first glance appear to be limited in its scope and confined to a comparatively minor issue, but a close and serious study of facts and documents will reveal that the questions facing the foreigners and Chinese at Shanghai embrace in fact the whole problem of the present and future foreign intercourse with China—the same characteristic psychologies, the same questions and methods of their solutions.

As far as the Chinese Law and various Regulations and historical material appended to this volume are concerned, they complete the set of Laws and Regulations promulgated by the Republic of China and published in "Shanghai: Its Mixed Court and Council." It is hoped that, together with the latter, the present volume will form a complete handbook for legal practitioners and business men, who, under the new regime in the Settlement, will find it indispensable.

ANATOL M. KOTENEV.

Shanghai,

March 15, 1927.



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## PART I.





# SHANGHAI : ITS MUNICIPALITY AND THE CHINESE.

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## CHAPTER I.

### SHANGHAI AND CHINA'S POLITICS, 1919-1924.

Since the establishment of a Republic in China, the weakness and inability of the Central Government in Peking to cope with the political and social problems of this vast country has been more than apparent. The Revolution of 1911 did not bring any radical change into the general situation. The same corruption and inefficiency were inherited, and "the lack of close touch between the government and the people, and the entire separation of those who were in office and those who were not"\* remained as true as in the days of the Monarchy. Perhaps this breach between the rulers and the ruled became even wider with the inauguration of a Republican régime than in the days of the Tsings, as neither the principles advanced by the Revolution, nor the so-called Republican form of government, had any roots in the national conscience of the people. On the contrary, these were wholly antagonistic to the social system under which the Chinese had lived for centuries. They embodied ideas and conceptions incomprehensible to the vast majority of the population.

But the Republic, or more truly speaking, the Revolution, brought with it a new factor in national life—a factor yet destined, it may be, to bring about the regeneration of the country.

That factor was the Chinese Student.

The nett result of China's participation in the Great War on the side of the victorious Allies did not bring the desired recompense to balance the disappointments and disillusion at home. The hopes which China had placed upon her entry into the conflict on the side of the Allied Powers were dispersed like smoke at the Versailles Conference.

*The Great War and the Treaty of Versailles, 1919.*

The failure especially of the Chinese Delegation to recover the territory of Shantung (which had already been earmarked as Japan's share of the war spoils) aroused tremendous indignation in China. On May 4th, 1919, the students of Peking held a mass meeting, which ended in a demonstration at the residence of Tsao Yu-lin, a member of the Cabinet, who was suspected of being pro-Japanese. They broke into the house, beat and severely injured the Chinese Minister to Tokyo, and set the house on fire. The Government ordered the arrest of the ringleaders, but this only aroused further indignation amongst the students. Thousands of them made speeches in the streets and obstructed traffic. The

*Students Movement, 1919.*

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\*Edict of the Emperor Kuang Hsu, September 1st, 1906, announcing the Constitutional Reform in China.

position became very serious and on June 3rd the Government was compelled to arrest a gang of students and keep them confined in the Law College of the National University.

Formation of the  
Shanghai Stu-  
dents' Union,  
1919.

The effect of the news concerning the handing over of Shantung to Japan, and the neglect displayed by the Powers in response to China's plea for general readjustment, had a similar effect upon the students in Shanghai. The disappointment was even much greater than in Peking, as it was hoped that the Internal Peace Conference which, under the protection of Shanghai's traditional political neutrality had assembled there on February 20th, 1919, and which had tried to end the internecine strife between the South and the North, would impress the Allies and make them lend an ear to the Chinese demands. A mass meeting convened by the students at the beginning of May proclaimed an anti-Japanese boycott and a general strike. Thirty delegates representing as many educational institutions met at the Fuh Tan College and formed a Students' Union. This organization thereafter directed the boycott campaign. It was also the main force behind the strike, of which it tried unsuccessfully to assume complete control. Besides the students, merchants and shopkeepers, some 24,000 industrial workers in the Settlement joined the strike.

Many methods of intimidation were used to stage a general national indignation movement, and all kinds of leaflets and handbills containing exciting statements were distributed in the streets. It was a phantasmagoria of wild rumours and ideas, in which the Chinese public lived during the whole month of May and in which the voice of the more sober people could scarcely be heard.

The two great political parties in China—the Kuomintang and the Chingputang—cast their lots with the movement which, in effect, had an appearance of a real national manifestation. They vied with each other in converting their party organs into propaganda media for what they styled the "New Culture Movement."\*

In order to cope with the situation which grew worse from day to day, the Shanghai Municipal Council mobilised all its forces, and issued notifications warning the public against committing acts of intimidation and prohibiting distribution of inflammatory handbills and exhibition of flags bearing inscriptions which furnished incitement to disorder. Meetings, processions and demonstrations in the streets were also prohibited and the Students' Union was notified that its premises would be sealed unless its activities in connection with the strike ceased. On receipt of this notice the students left the premises and settled in new quarters in the French Concession.

On the other hand, the Chinese authorities and the Chinese Chamber of Commerce tried to allay the general excitement, but their efforts were of no avail. The conciliatory spirit shown by the merchants appeared to have the effect of spurring the students on to greater lengths. The agitation was increased and the people urged to persevere in the strike until the Central Government agreed to the following demands: (1) the punishment of the "national

\*Hu Shih, PH.D., Chinese National Association for the Advancement of Education Bulletin No. 6.

traitors", (2) the cancellation of secret agreements, (3) the release of the students, and (4) the return of Tsingtao. This state of affairs lasted until June 11th, when news reached Shanghai that the three so-called "national traitors" had been dismissed by the President. When this information was received certain of the shopkeepers, students and labourers who had taken part in the movement, celebrated the event by holding meetings and processions in the Chinese territory. One of these processions entered the French Concession but was broken up by the French police, while another one succeeded in entering the Settlement and was stopped by the Municipal police. A fracas ensued during which the processionists attacked the police, who ultimately had to resort to the use of firearms and several shots were fired, resulting in one Chinese being killed and several others wounded.

The anti-Japanese boycott, followed by all kinds of excesses on the part of the students, lasted until the middle of December when it gradually died out. During this time the Chinese students and various other groups of the population demonstrated an extraordinary ability in organizing themselves into different unions and societies resembling, in their structure, the traditional Chinese trade guilds and secret societies, which, as we know, have played a very important rôle in the history of China during the last hundred years.

Such, in brief, is the history of the genesis of the movement which, as time progressed, was to affect the relationship between the Shanghai Municipality and the Chinese to an extent and degree paralleled only by an international crisis.

As a matter of fact, the movement of 1919, called by some people a national movement, by others a riot of undisciplined and credulous Chinese students exploited by unscrupulous Chinese politicians for their own purpose, and by the Chinese themselves "New Culture Movement," and which passed almost unnoticed in Europe and America, has become of great significance as affecting the whole future history of China and her international relations. It was undoubtedly the first phase of the formation of a new factor in the Chinese political and social life—the birth of an united public opinion, the edge of which was directed against the foreigners and their privileges in China. It was rightly described by the Chinese radicals as a "New Culture Movement" because it was a product of Western ideas and methods of political struggle imported into China by the returned students from Europe and America.

Birth of a United Chinese opinion in Shanghai.

The general strike in 1919 brought into being a new and important feature in the life of the Settlement. It resulted in the formation of new Chinese public bodies—the Street Unions, which were ostensibly organized for the promotion of the common interests of Chinese residents in the Settlement, but in fact, as it appeared later, were sometimes responsible for the promotion of ill-feeling against the foreign administration in the Settlement. Their first step was an agitation against the increased Municipal assessment coupled with demands for Chinese representation on the Municipal Council and revision of Land Regulations in such a manner as to ensure to the Chinese a decisive majority on the Council.

Formation of Chinese Street-Unions, 1919.



First effects of the movement of 1919 on China's international politics.

We prefer in this chapter to refrain from a more detailed analysis of the so-called China's "New Culture Movement" until we review the events of 1925, when we will have in our possession more facts and documents, but we must admit now that this *quasi* or really national movement gave a new impetus to Chinese international policy. It obtained the necessary moral support, and—what was far more important—an aspect of real force, even though it be called the "animal spirits" which Dr. Sun Yat-sen threatened to rouse in order to release China from "foreign domination".\* We must admit that it was only in the knowledge of this support that the Chinese delegates at the Versailles Conference refused to sign the Peace Treaty, and left the question of Shantung and the other questions open to further consideration, notwithstanding the pressure brought to bear upon them by the Japanese and some of the Allies.

Soviet Russia and Chinese Public Opinion, 1919.

The importance of the Students' movement of 1919 was overlooked in Europe and America, but it did not escape the vigilant attention of the Union of the Soviet Republics, whose agents, in spite of the occupation of Siberia by the forces of Admiral Kolchak and the Allied troops, swarmed into practically all of the important places of China. On July 25th, 1919, when the movement was at its height, the Soviet issued a declaration signed by Comrade Karakhan, acting for the Commissioner of Foreign Affairs at Moscow and addressed to the Ministry of Foreign Affairs at Peking. The contents of this declaration revealed, however, that it was not addressed to the Chinese Government, but over its head to those classes of the Chinese people who were primarily interested in abolishing extraterritoriality and obtaining the rich foreign settlements and concessions. The declaration stated that since the great revolution of October 1917, the Soviet Government had in the name of the Russian people declared null and void all secret treaties concluded with Japan, China and the ex-Allies, the treaties which were to enable the government of the Tzar and his Allies to enslave the Chinese nation for the sole interests of the capitalists, financiers and the Russian generals. This declaration, it continued, was suppressed by the public press in the pay of Americans, Europeans and Japanese. "Now the Soviet government returns to the Chinese nation without any compensation all that has been taken from them by the tricks of the imperialists—the Chinese Eastern Railway, the Boxer Indemnity, all concessions and settlements and renounces forever all special privileges, consular jurisdiction," etc.†

The telegram containing this declaration was however delayed in transmission, and reached Peking only in March 1919, being soon followed by another identical Note, dated September 27th, 1920, and handed to the Chinese representative in Moscow. ‡

\*Dr. Sun Yat-sen's Interview with the representative of the "Japan Chronicle," Kobe, December 1924.—"North-China Herald" December 13th, 1924. The correctness of this statement was never denied by Dr. Sun Yat-sen himself when he was alive, nor by his intimate followers after his death.—AUTHOR.

†The text of the 1919 Declaration, as translated by the Chinese Ministry of Foreign Affairs from the original French text in the form of a telegram, dated March 26th, 1920, Irkutsk.

‡The Text of Declaration of 1920 as published by the Soviet Mission.

It is difficult to make any definite statement in respect to the rôle of Bolshevist propaganda in the Students' Movement of 1919, although the Shanghai Municipal Police succeeded in discovering that such propaganda was being spread amongst the student classes and that agents for the sale and distribution of Bolshevist literature had been appointed in various schools.\* But it is beyond any doubt that the declarations of the Soviet government made a deep impression not only on the Chinese radicals and students, but also on Chinese merchants, who were hardly to be moved by any communist ideals, but who grasped the contents of the declaration from a purely business point of view. Anyhow, all sections of the Chinese residents of Shanghai were quick to realize that the declarations were primarily addressed to them and, while the Chinese government hesitated to accept the extravagant offer of the "Workers and Peasant's Government," the local organizations replied readily to the overtures of the Soviets.†

The events of 1920 and 1921 in the Settlement were again concentrated on the issues connected with the movement of 1919, and the unsettled international problems. The purely domestic affairs evoked but little interest, but questions connected with any foreign issue or move on the part of the foreigners in relation to the exercise of their treaty rights aroused loud protests on the part of the public and local Chinese press which, playing upon the lower instincts of the masses, did not stop at anything in order to inconvenience the foreigners and their administration of the Settlement.‡

On the other hand, any move made by foreigners to protest against the actions of the Chinese organizations promoting the anti-Japanese boycott and anti-foreign feeling amongst the Chinese masses aroused such violent actions on the part of the student bodies, that the Chinese Central Government had in some instances to resort to repressive measures against them.§ This resulted again in 1920 in the declaration of a nation-wide strike, in which the students of Shanghai took the lead. Strenuous efforts were made by means of street lectures to induce merchants and labourers to join the

The International Settlement in 1920-1921.

\*Police raid on May 16th, 1919. The premises of a certain Tah Tung Book Store 119B Foochow Road, and the Oriental Book Co. 84 Canton Road were searched and certain books and documents of pronounced socialist and anarchical tendencies were seized. The advertisement contained in these books and documents showed that special agents were appointed for their sale at schools. The most inflammatory of the books seized was the "People's Bell"—the name of the organ of the Students' Union of Peking and Tientsin.—Mun. Council's Report, 1919, pp. 88a, 89a.

†Telegrams of the Amalgamated Association of the Street Unions, the Shanghai Students' Union, the National Organizations' Union of China and several of the oldest established guilds of Shanghai.—Mun. Council's Report, 1920, p.70a.

‡During the height of the agitation against the payment of Municipal rates the leading Chinese newspapers published advertisements urging residents to refuse to pay their rates and mischievously and maliciously accusing the police of assaulting innocent people and wantonly damaging goods in some of the shops they visited in executing distraint warrants issued by the Mixed Court. The "Ming Kuo-pao," one of the offending papers, was proceeded against in the Mixed Court and its editor was fined \$300. This had a definite effect upon the other native newspapers engaged in the same propaganda.—"The National Herald," "The China Times," "The Sin Wan Pao" and "Da Tsung Jih Pao," which hastened to publish their apologies, completely withdrawing their libellous statements. See *ibid.* p. 67a.

§The Funatsu incident, January 9th, 1920. Mr. Funatsu, Japanese Consul-General in Tientsin, protested to Mr. Huang Yung-liang, Tientsin Commissioner of Foreign Affairs, against the continuance of the boycott and the election of Mr. Pleu as Chairman of the Tientsin Chamber of Commerce. This stimulated the students to renewed activity, as a result of which a number of them were imprisoned by order of the Central Government at Peking.—AUTHOR.



movement again, but the reluctance of the latter and the stern measures adopted by the native authorities, who proclaimed martial law in the Chinese territory, prevented further spread of the strike.

However, the failure of the strike in 1920 did not very deeply affect the progress of the movement, which found new impulse for its growth in the general state of international affairs on the one hand, and in the revival of industrial strikes in China on the other.\*

Shantung Question, 1920-1921.

As a matter of fact, in the middle of January 1920, Mr. Obata, Japanese Minister to China, handed to the Chinese Minister of Foreign Affairs a Note in which, on behalf of his government, he suggested direct negotiations between China and Japan on the Shantung question. On this issue the students and the merchants joined together and vigorously protested to the President and Cabinet against any solution of the problem except through the League of Nations, on the Council of which China had a seat.† The reasons for the protest were apparent. Chinese public opinion did not trust the Central Government, which was suspected of pro-Japanese sympathies, and which, had it conducted the negotiations in the usual diplomatic manner, could easily have failed either on account of selfish considerations or lack of power to resist the pressure of such a powerful country as Japan.

Meanwhile, a public exposition of the whole Shantung problem, in which the Chinese considered that they had a just cause, might have secured for them moral public support from outside. The difference between present-day China and the China of the past century is that the country to-day has learned to know the West, while the old China did not know it and did not wish to know it. Those Chinese whose views and wishes were taken as the expression of public opinion, and the returned student leaders, fully realized all the weak points in the state of political and social affairs in Europe and Japan after the Great War.‡ They did not fail to appreciate also the traditional sentimentalism of America and her limited practical interest in China, which afforded her ample opportunity to exercise this sentimentalism in the highest degree as expressed in the famous Fourteen Points of President Wilson.

Chinese Public Opinion and the Washington Conference, 1922.

The preliminary announcement of the proposed Conference at which the questions of limitation of armament, and the Pacific

\*The immediate cause of the industrial unrest in Shanghai, which assumed serious proportions in June and July 1920, was the high price of rice. During these two months no less than 10 strikes occurred out of a total 45 for the year, 25 strikes took place in 1919 and in 1918 only 13, the comparison showing clearly how seriously labour troubles disturbed the economic life of the Port of Shanghai during 1920.—Mun. Council's Report, 1920, p. 68a.

†Upon the signature of the St. Germain Peace Treaty with Austria, on September 10th, 1919, China became a member of the League of Nations and Dr. V. K. Wellington Koo, Chinese Minister, was elected to the League's Council.—AUTHOR.

‡The general economic state of affairs in Europe; social movement in Great Britain, Germany, Russia, Italy and Japan; unemployment caused by the demobilization of huge armies and war-time industries; the labour movement in Great Britain and Japan as the result of the restoration of wages to their proper economic relation to prices, and bringing them once again to a level commensurate with buying power; signs that Labour was preparing to resist the operation of economic laws under the slogan proclaimed by the Third International at Moscow, etc. The latter impressed particularly the Chinese radicals owing to the dimensions which the social movement assumed in such a great country as Russia, and the advantages which China could derive and already had derived from this movement. On the other hand, the Chinese could not remain unimpressed by the labour movement in Japan, the strikes and demonstrations in Kobe, Osaka, Tokio, in July 1921, workers political demands and their revolutionary tendencies, which prevented the ruling political factions in Japan from undertaking any military move to strengthen their diplomacy in any question affecting the *status quo* in the Far East.—AUTHOR.

and Far Eastern problems were to be discussed, inspired new hopes in China of seeing the unsettled questions exposed once more to public judgment. In the eyes of the Chinese public at large, the coming Washington Conference was only a continuation of the Paris Peace Conference, and another opportunity to draw the attention of the world democracy to the injustice imposed upon China by the "egoistic"\* policy of the Western Powers and Japan, seeking to take advantage of China's temporary political weakness. But if the Chinese public had not fully realized the subject of the Conference, the Chinese diplomats were aware that questions relating to Shantung, the Twenty-one Demands, and extraterritorial jurisdiction *in toto*, which formed the main interest of the powerful Chinese bodies in the Treaty Ports, could not be brought before the Conference on account of various technicalities. All the nations represented at the Conference, save the United States, China and The Netherlands, were bound by the Treaty of Versailles. Japan, of course, was in a position to oppose any contemplated action by any of these Powers which could be regarded as a departure from the terms of the Treaty. And, further, the responsible Chinese politicians could not overlook the additional fact that the position of the Chinese delegates at the Conference as mere representatives of the Chinese Central government would be more than delicate, and at best of little importance, if any, to public opinion in general throughout the world. The degree of popularity and actual power enjoyed by the government in China† on account of its recent promises‡ still unfulfilled were too apparent to permit of any nation recognizing the Chinese Government at Peking and its delegates as truly representing the wishes of the Chinese people and having their support.

The only authority which could alter to a certain extent the situation and furnish to the Chinese delegation at the Conference the aspect of China's popular recognition was the authority of general public opinion. There was, of course, no opportunity to obtain such an expression of the national opinion, as there was no workable machinery for the purpose. There was, however, the voice of the Chinese youths in the Treaty Ports and particularly in Shanghai, where, under the protection of the same privileges enjoyed by foreigners, opinion attained its fullest expression.

In effect, as soon as the news concerning the appointment

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\*We cannot discover any Chinese public document relating to the period 1921-1922, in which the policy of the Powers in respect to China was officially styled "imperialist and capitalist." These terms appear for the first time in Chinese documents between 1924-1926, as a direct result of the influence of the official Soviet terminology.—AUTHOR.

†Independence of Southern and Eastern Provinces, Yunnan, Kwelchow, Szechwan and Hunan declared and actually exercised in the period preceding 1922. Civil wars: War between North and South, 1917-1918; between Chihli and Anhwei, 1920; Kwangsi-Canton War, 1921; Hupeh-Hunan War, 1921; Szechwan-Hupeh War, 1921; Mutinies in the Peking, Nanking, Soochow, Tsinan, Mukden, Wuhu, Loyang, Pukow, Yochow, Wuchang, Changte, Anking, North Tungchow, Sian, Antung, Nanchang, Chefoo, etc., 1912; Pukow, Woosung, Nanking, Shanghai, Canton, Anhwei, Yunnan, Chekiang and Hellungkiang, 1914; Szechwan, Kweichow, Kansu, Shantung, etc., 1915; Hunan, Canton, Shansi, etc., 1916; Peking 1917; Honan, Fukien, Hupeh, Kiangsi, etc., 1920; Hupeh, Honan, 1921.

‡Presidential Mandate calling for the election of a new Parliament of 1921, issued in response to the firm demand of the conference of the Chamber of Commerce of Kiangsu Province in Nanking in January 1921, for the *honest* election of a new Parliament, until whose ratification of the proposed new taxes the merchants refused to pay the stamp duty, the income tax and surtax.—AUTHOR.



of Chinese delegates to the Conference\* reached Shanghai, the Settlement became the field of an intensive propaganda. This propaganda was followed by meetings of local bodies, students and even schoolboys and girls, at which resolutions dealing with various phases of China's alleged wrongs and her desires were passed and telegraphed broadcast. However, the factional dissension was such that the resolution calling for the despatch of a telegram to Washington demanding the cancellation of the Twenty-one Demands and the unconditional return to China of Tsingtao and other rights and concessions, could not be passed by the mass meeting on December 8th, 1921, and the leaders had to accept it at a new meeting held behind closed doors in the premises of the National Chinese Students' Union.†

The short time which has elapsed since the events of 1921-1922 does not permit us to arrive at any definite conclusion with regard to the political and economical factors which led to the final success of China at the Conference, when the principles advanced by the Chinese delegation‡ were recognized and the way cleared for the Sino-Japanese understanding in respect to Shantung§ and the notorious Twenty-one Demands.

However, it is beyond any doubt that the principles laid down at the beginning of the Conference reflected largely the general principles of the social movement in Europe and Japan caused by the War, and that the only power behind the Chinese delegation at Washington was Chinese public opinion as demonstrated in the Treaty Ports and particularly in Shanghai. Thus the movement which had been started in Peking in 1919 and which received its fullest expression in Shanghai, foreshadowing the appearance of a new factor in China's international politics, attained the aspect of international recognition. And if this were still questionable in the eyes of the foreign historians and politicians, it was so in the mind of the Chinese themselves. Shanghai was the centre of a new political life in China, and now fated to become the centre of China's social movement.

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\*Dr. Sao-ke Alfred Sze, Envoy Extraordinary and Minister Plenipotentiary to the U.S. of America; Dr. V. K. Wellington Koo, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James; Dr. Wang Ching-hui, Chief Justice of the Supreme Court of China; and Mr. Wu Chao-chee.

†Referring to the agitation connected with the Washington Conference the Mun. Council's Annual Report for 1921, p. 60a, states as follows: "The audiences of the several meetings held up to end of the year in connection with the Washington Conference consisted for the most part of youths, professional agitators and idlers. It would not be correct to assume that the resolution passed at these meetings at any time represent the opinions of the Chinese people. In China, however, where the masses to a great extent are swayed by the few, this agitation may produce quite unexpected and dangerous results. It may revive (among the masses) that never extinct spark of anti-foreign feeling and cause an uncontrollable conflagration, which will be fed by the usually untruthful and biased propaganda which has been scattered broadcast by disgruntled politicians and others."

‡"As the foundation of its work in respect to China, the Conference adopted the fundamental principles, in agreeing: (1) to respect the sovereignty, the independence, and the territorial and administrative integrity of China; (2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government; (3) to use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China; (4) to refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States and from countenancing action inimical to the security of such States."—Willoughby, China at the Conference, Washington, 1922.

§The Conference furnished a most favourable opportunity for negotiations between China and Japan in which by mutual agreement a solution of the difficulty might be found. In order that the parties might be brought together, the good offices of Mr. Balfour and Mr. Hughes, individually, were tendered to both parties, with their consent, and conversations looking to a settlement were begun. These conversations continued for many weeks and resulted in a complete agreement, which was embodied in a Treaty signed on the part of China and Japan on February 4th, 1922."

## CHAPTER II.

### SHANGHAI AND CHINA'S POLITICS, 1919-1924.—(Continued).

Since 1918 the labour movement in Shanghai has attained considerable proportions and on a number of occasions the general attention of the public has been focused upon it. The wave of strikes has affected almost every branch of Shanghai industry. The following table of statistics in regard to the strike movement for the period of 1918-1924 gives some idea of the new economic problem which has come into being in Shanghai within the last five years.\*

Labour Movement, 1919-1924.

Year	Strikes	Strikers	Work days lost
1918	13	15,000	90,000
1919	25	24,000	245,450
1920	45	57,088	325,401
1921	36	22,000	195,800
1922	71	65,470	728,010
1923	51	23,500	118,939
1924	60	37,435	289,630

*NOTE.—These figures do not include incipient strikes, which were avoided by immediate increases in wages and temporary pay of rice compensation money.*

According to the statement of the Commissioner of Police, contained in his annual report for 1922,† there were in the settlement at that time about 112 mills, factories, filatures and works, employing approximately 112,000 people, of whom about 75 per cent. belonged to 42 different trade unions. Other workers in the Settlement liable to be influenced by trade unions numbered approximately 30,000 ricscha coolies, 50,000 shipping and riverside workers and 5,000 chauffeurs. These figures did not include the number of industrial enterprises and workers in the adjacent districts, which are closely connected with those located in the Settlement by common industrial and economic interests. During the period of 1922-1924, industrial activities in Shanghai showed a considerable growth, so that it would not be an exaggeration to assume that the number of mills, factories and other works in the Settlement totalled about 150 and the number of workers employed in these enterprises approximate 150,000. Thus the total number of all industrial workers in the Settlement in 1924 reached very closely to the figure of 280,000.‡ All these employees were under the direct or

\*Compiled from the annual reports of the Commissioner of Police for the respective years.—AUTHOR.

†Mun. Council's Report, 1922, p. 78a.

‡According to a report made by the Child Labour Commission, dated July, 1924, there were 279 factories, large and small, situated in the Settlement and adjacent Chinese territory, employing approximately 179,787 people—44,821 male and 105,606 female employees above 12 years of age, and 4,385 male and 17,955 female employees under 12. This estimate is not considered complete, nor does it include factories in the French Concession. Mr. M. Thomas Tchou, Director and Secretary of the Shanghai Benevolent Industrial Institution, in his recent pamphlet regarding the labour conditions in Shanghai, states that these figures are for factory workers and, therefore, represent about 60 per cent., of the total, which is about 288,000. To this must be added another 100,000 engaged in various forms of transportation, including about 30,000 ricscha coolies and nearly 50,000 wheelbarrow and wharf coolies. This brings the total up to approximately 450,000.—AUTHOR.

indirect influence of various trade unions, while the numerous class of Chinese artisans and workers of small native workshops in the Settlement, which are not included in this number, formed different guilds. The body of Chinese labour in being in Shanghai was far from being unorganized and therefore it was quite natural to see it participating in the political life of the Settlement. However, during the period under review, a large number of Chinese workers in Shanghai did not display any particular interest in China's domestic or foreign politics, being entirely absorbed by their own interests.\* In fact, even the participation of labour in the movement of 1919-1920 was due more to economic reasons than to any real interest on the part of the strikers in international problems affecting China. The political strike called in June, 1919, by the students and politicians as a protest against the Versailles Treaty coincided with a sudden increase in the cost of living due to higher prices for rice, the staple food of the population, and further, to the depreciation of the copper coins, in which the wages of the workers are paid.

A close study of the unrest during 1919-1922 and 1922-1924 in Shanghai reveals the following main features of the strike movement for these periods :—(1) That 70 per cent. of all strikes were of economic origin (high cost of living, increased cost of rice, etc.) ; (2) That 18 per cent. of the strikes were in connection with professional disputes (opposition to foreign administration, foremen, rights to form labour unions, etc.); (3) and that only 12 per cent. of the strikes were staged out of sympathy to strikers in other branches of industry as a political protest, and for similar reasons.

These figures vary only slightly from those given for September and December 1922 by "The Endeavour," a vernacular publication in Peking, but in the main they may be taken safely as representing very nearly the actual state of affairs in the Settlement in 1919-1924.†

*Economic reasons for the Chinese Labour Movement, Shanghai, 1919-1924. High price of rice.*

As a matter of fact the number of strikes and their intensiveness stand in direct relation to the price of rice. The demand for an increase of wages and the declaration of a strike followed each time when the market price of rice showed a tendency to go up, while any downward movement invariably marked a settlement of the issue. This led in some instances to the determination of wages by the cost of rice, and as soon as the actual market prices reached a higher rate than that laid down as the basis for the calculation of wages, the employers had either to pay the difference (in the form of an increase of wages) or the workers went on strike.

During 1919 and 1924 the prices of rice showed a constant upward trend so that strikes in the Settlement were of almost daily

\*In connection with this it is worth while to note one of the typical resolutions passed by qualified workers during the wave of strikes in 1922, which gives a clear idea about the chief objects of the movement. The resolution of the meeting of workers and employees of the Shanghai-Nanking and Shanghai-Hangchow Railways, October 17th, 1922, which comprises the following demands :—(1) Increase of wages; (2) Observation of holidays and Sundays and national festivals, without deduction of wages; (3) Work to cease at 5 o'clock on Sunday afternoon; if extra work has to be done in an emergency, two days holiday to be granted in addition to the regular one; (4) Any man absent through injury to receive full pay instead of half pay as at present; (5) Pensions for workmen who retire through old age after long service.—AUTHOR.

†The China Year Book. 1924, p. 658.



occurrence.\* The fluctuations were mostly sudden and spasmodic, and it was a very complicated matter to follow the prices so closely as to avoid friction with the workers, who being driven by need could not await a gradual adjustment of their wages subject to market prices of industrial products. Moreover, the employers, having in view the ungoverned fluctuations of food prices and their possible fall, invariably displayed great reluctance in granting increases, realizing full well that once wages were raised it would be difficult to readjust them without further friction with the workers.

It is very difficult to ascertain the real causes of the fluctuation in the rice market as the few opinions on this subject vary considerably. The Chinese authorities hold that the high prices are due to illicit exportation of rice from the provinces, hoarding for the purpose of profiteering, and the absence of competent Chinese supervision of stock movements in the Settlement.† This point of view is shared by almost all Chinese radical parties represented by the Rice Stabilization Association, the Students' Union, Amalgamated Street Unions, etc., while the Shanghai Guild of Rice Hong's advances the following reasons to account for high prices:— (1) That the area under cultivation has been considerably reduced during the last years on account of high prices received for cotton; ‡ Many rice-producing districts were affected by bad crops caused by winds, rains and a parasite which destroyed the rice plantations; (2) That the farmers were holding back their rice in the hope that prices would go up, on account of which the rice hong's in Shanghai were frequently compelled to pay on the spot the same prices which prevailed in Shanghai; (3) Of late most of the employees connected with the rice trade had received increases in pay and also that materials necessary for the cultivation of the crop had increased in price.§

Municipal Measures to cope with the rice situation in 1920-1924.

Regarding the allegations of the Chinese authorities and the various unions in respect to the smuggling, hoarding and profiteering the Guild insisted that those statements were merely the result of complete ignorance on the part of those bodies.

It was obvious however, that in order to cope with the situation and the ever-growing industrial unrest in the Settlement some urgent measures had to be devised. In this respect the Municipal Council took the lead, but unfortunately, all its efforts met with but

Municipal Licensing of rice shops 1921.

\*The average and the highest prices of rice for the period 1919-1924

		1919	1920	1921	1922	1923	1924
January	.. ..	7.00	8.00	10.00	10.00	10.60	10.40
February	.. ..	7.00	8.00	8.80	10.70	10.80	10.30
March	.. ..	7.40	8.80	8.00	11.90	12.00	12.20
April	.. ..	7.00	8.60	8.80	12.00	12.10	12.00
May	.. ..	6.40	9.00	9.80	12.00	12.35	12.00
June	.. ..	†6.80	10.40	10.80	12.40	13.00	12.60
July	.. ..	7.60	14.00	10.70	13.20	13.80	12.80
August	.. ..	8.20	14.00	11.80	13.60	14.80	13.05
September	.. ..	8.20	14.00	11.60	13.00	15.00	16.50
October	.. ..	9.20	10.00	12.50	12.80	13.40	13.50
November	.. ..	7.60	9.00	11.00	11.50	12.00	10.60
December	.. ..	7.40	9.40	10.40	10.80	10.40	10.40
Average	.. ..	\$7.48	\$10.26	\$10.43	\$12.00	\$12.52	\$12.22

†Commissioner for Foreign Affairs to the Senior Consul, February 3rd, and April 19th, 1921.

‡In some rice-producing districts on account of increased growing of poppy for the production of opium.—AUTHOR.

§Mun. Council to the Senior Consul, June 15th, 1921.

little success. The prices continued to fluctuate, and there is very little hope of stabilization in the near future.

In 1921 the Municipal Council started the practice of licensing rice sellers, with a fee at \$1.00 per half year.\* The intention of the Council was not to attempt to fix the price of rice in interference with the legitimate trade of rice, but it was considered essential to exercise some form of control especially as profiteering in food products does not constitute an offence according to the Chinese Criminal Laws.†

Opposition to this measure speedily developed. The principal rice dealers in China are wealthy and influential men and they saw in the new licensing procedure an undesirable form of control. Within a surprisingly short space of time they brought pressure to bear on native officialdom and even that radical Chinese body, the Amalgamated Association of Street Unions, which a short time previously had protested against hoarding and profiteering in rice.

All these institutions, headed by the Commissioner for Foreign Affairs and the Chinese General Chamber of Commerce, espoused the cause of the rice dealers.‡ After a very lengthy correspondence§ between the Consular Body, the Commissioner for Foreign Affairs, the Municipal Council and the Chinese General Chamber of Commerce, the Council on June 25th, 1921, agreed to amend the licence conditions in such manner as to vest the direct control of stock records of the members of the Rice Guild with the latter and not with the police as was stipulated at first. However, on June 30th, 1921, the Amalgamated Street Unions forwarded the Council an ultimatum demanding the withdrawal of the projected reform and threatening to declare a strike and close down all shops should the demand of the rice dealers not be met. On the other hand, the rice merchants some days previously had held a meeting and passed a resolution to declare a general strike both within and

\*Ratepayers Meeting, April 15th, 1921.

†The conditions regarding the Municipal licensing of rice dealers, introduced on July 1st, 1921, contained the stipulation :

1. That the licence be not transferable.
2. That the General Municipal Rate payable in respect of the said premises be paid within 14 days after the date on which it shall become due for payment.
3. That free access be given to the Police on duty and officers of the Revenue and Health Offices.
4. That the premises be maintained in an approved sanitary condition.
5. That the licensee keep a correct written record of the stock of rice in his possession and that such record be at all times open to inspection by the Police.
6. That the licensee observe and comply with such rules and regulations directed against the hoarding of rice or against profiteering therein as may from time to time be enforced by the Council by notification published in the Chinese press.
7. That no gratuities of any kind be paid to any employee of the Council.
8. That on a breach of any of its conditions the licence be subject to withdrawal or suspension by the Council and the licensee be liable to prosecution.

—Mun. Council's Report, 1920, p. 74a.

‡Commissioner for Foreign Affairs to the Senior Consul, April 26th, 1921, containing the protest of Chia Kee Rice Guild; April 27th, and May 5th, 1921, containing the protests of Machine Rice Millers' Guild and the Chinese General Chamber of Commerce; Chinese General Chamber of Commerce, June 30th, 1921; Association of the Street Unions to the Mun. Council, June 30th, 1921.

§Senior Consul to the Mun. Council, June 16th, 1921; to the Commissioner for Foreign Affairs, July 2nd and 6th, 1921.

Mun. Council to the Senior Consul, June 15th, June 16th, 1921; to the Chinese Chamber of Commerce, June 20th, 30th, July 1st, July 4th, July 20th, 1921; to the Woosung-Shanghai Rice Stabilization Society, July 2nd and 6th, 1921.

Mun. Council's Proclamation, June 30th, 1921.—Mun. Council's Report, 1921, pp. 71a-87a.

outside of the Settlement unless the licensing measures were abandoned.\*

The Council remained firm, in spite of all persuasion and the usual intimidation. The strike started on July 1st and collapsed on July 6th.†

Of course, the steps taken by the Council could hardly be expected to alleviate the situation in regard to industrial strikes, as all their efforts were confined to a very limited area of the Settlement, while the Chinese Government displayed, as in the past, complete indifference in respect to everything affecting the welfare of foreigners in China.

The distress suffered by the working classes as the direct result of the constantly increasing price of rice was and continues to be aggravated by the depreciation of copper coins and silver subsidiary coins in which the workers, as a rule, receive their wages. The reason of this depreciation is that there is no legal ratio between cash and dollar, and cash and tael, the exchange rate being controlled by factors of supply and demand between copper and silver, while the silver subsidiary coins are mostly light weight coins minted of silver of a very low fineness. The Chinese Government leaves these facts unnoticed and does not try to check the evil of minting light weight silver coins nor to check the alarming number of copper coins turned out by the numerous provincial mints.‡ The unregulated production of subsidiary coins of all denominations destroys the normal proportion between the wages and the minimum of cost of living, causing constant fomentation amongst the workers.

In fact, the exchange rate of a silver dollar for copper currency shows the following number of ten-cash pieces to a dollar for the period of the six years under review :

December	1918	...	...	134.7	copper coins for M.\$1.
February	1921	...	...	145.7	" " " "
June	1922	...	...	175	" " " "
April	1924	...	...	214	" " " "

A very considerable number of strikes (about 18 per cent.) were caused by purely professional disputes between the employers and their employees, and the opposition of the latter to the foreign methods of administration. It should always be borne in mind that despite the growing industrialization of China in general and of Shanghai in particular, the formation of a body of trained workers comprising a separate class of the proletariat as in Europe is yet not completed. Most of the labourers in Shanghai come direct from the countryside.§ There is a certain number of workers coming

*Economic reasons of the Chinese labour movement and strikes—1919-1924.*  
Depreciation of copper coins.

*Professional Causes, 1919-1924.*  
Discipline of labour.

\*In commenting upon this situation, the "Hsin Shun Pao," one of the native papers in Shanghai, stated in its leader as follows :

"Now that the Council has explained the situation guaranteeing that there shall be no undue hardship or harsh treatment and as this explanation has come from a responsible source there is no reason to fear it will be unfulfilled. But the opposition is raised on the grounds of sovereign rights and not only of fear of hardship or trouble, so it is difficult to say that the problem can be solved by any sort of explanation."—Mun. Council's Report, 1921, p. 79a.

†It should be acknowledged that the Chinese authorities and the Chinese Chamber of Commerce and various other bodies, who first rendered their support to the rice dealers, finally withdrew it and co-operated with the Mun. Council to check the spread of the strike and to arrive at a settlement of the conflict.—AUTHOR.

‡Tientsin, Mukden, Nanking, Hupeh, Hunan, Szechuen, Kwangtung and Yunnan.—AUTHOR.

§Ningpo and Kiangsu.



from other places, such as Canton, Wusieh, and other cities, but the majority come from the country. They are farmers, fishermen, or seasonal workers and it takes considerable time to train them to the essential discipline of labour, which is particularly required in the textile industry, iron and shipbuilding works and similar enterprises. A Chinese common labourer is not, as a rule, accustomed to such discipline. He cannot understand the complete mechanization of modern production, which requires from the worker not only training, but also punctuality and a certain mechanical proficiency in his work. He fails to realize that any retardation or interruption of a single worker destroys the whole system of production, causing expensive delay in the work and movement of machines. The foreman, whether foreign or Chinese, who supervises his work and requires that the timekeeping corresponds with the normal speed of the machines, appears in his eyes as an oppressor, who tries to squeeze out of him everything for the benefit of the employer. The imposition of fines and other disciplinary measures, applied in modern industry as measures to maintain the necessary discipline of labour, is for a Chinese worker nothing more than another inquisitorial way to deprive him of his lawful earnings.\*

In effect, the treatment of the workers in the mills, factories, filatures and works owned by the foreigners and Chinese in Shanghai is very far from being cruel, as alleged by various Chinese labour unions. The imposition of fines or dismissal of workers for their unfitness is a matter of a very rare occurrence if compared with America and Europe. In spite of the fact that hygienic conditions in the factories are not regulated by law and remain in all cases at the discretion of the employer, most factories in Shanghai are built according to the latest requirements of modern practice and provide adequate light and air. Many firms also furnish hospital, dispensary and educational facilities. The Commercial Press (Chinese-owned enterprise), the famous Naigai Wata Kaisha (the source of great industrial unrest in Shanghai), the British-American Tobacco Co. and other firms, have departments of this nature. A number of Chinese and foreign firms operating in the Yangtszepoo district in Shanghai have supported the Social Centre, which is under the supervision of the Shanghai Baptist College and which provides hospital and educational accommodation for the workers of that district.† Even the discipline of the workers is not so rigidly enforced as in America and Europe; the employees are permitted during working hours to speak, to move about freely and in some branches of industry even to smoke. Nevertheless, this discipline, which we call the discipline of labour, is one of the causes of frequent strikes, and the scapegoat in all these strikes

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\*As a typical case of workers demands in connection with alleged cruelty of foremen it is interesting to cite the resolution adopted by a meeting of workers in the Japanese Yangtszepoo Printing Office in Shanghai on October 19th, 1922. In this instance 200 went on strike in consequence of an alleged insult to one of their number by a Sikh-watchman: (1) Dismissal of the offending watchman; (2) *Foreign foremen to be selected by the workmen themselves*; (3) Better treatment for apprentices; (4) Holidays on Sundays and festival days, with pay; (5) Reinstatement of strikers, with strike pay.—AUTHOR.

†The China Year Book, 1924, p. 657.

appears to be the foreman, who is accused of all kinds of cruelty and acts of injustice towards the workers.

This being the state of affairs, the workmen try to organize various trade unions, the edge of which is directed against the foreman, or rather, against the foreign method of operation and administration whom he represents.

It is apparent that in the absence of any regulations governing the function of these bodies in the Republic of China and the general ignorance of the masses of workers, making them an easy prey to all kinds of outside agitators, the employers frequently refuse to recognize them. This is a new source of discontent and strikes, which can be settled, of course, only by the Chinese Government.

In 1923 a project of regulations concerning the trade unions was submitted to Parliament at Peking. According to this project, workers engaged in the same occupation had the right of organizing into unions for the purpose of securing their economic well-being and promoting their interests. However, it is curious to mention that, though according to this project the Unions had to encourage mutual assistance among their members and endeavour to secure an improvement in conditions of employment, they were refused the right to strike, which still constitutes an offence under Art. 223 and 224 of the Chinese Criminal Code. The workers might only investigate conditions of labour, make proposals to the Government with regard to labour legislation and answer all enquiries of Government offices. The authorities reserved the right of dissolution of a trade union if it passed or carried into effect a resolution (a) directed against the present form of Government; (b) likely to disturb the public peace; (c) likely to endanger the normal flow of life of the community; or (d) likely to obstruct communication or inflict injury on the nation or society.\*

Chinese Government Trade Union Regulations, 1923.

The remarkable feature of these draft regulations was the outspoken wish of the Chinese Government to control the labour movement, which receives a particular significance when we turn to the political reasons causing the strikes.

Political reasons of labour strikes, 1919-1924.

As a matter of fact, analysing the strikes, which during the period of 1919-1924 had been called as a protest against China's foreign political affairs, we see that in spite of the official efforts of the Government to suppress the movement, the strikers were largely supported by the provincial authorities and political parties who actually enjoyed the power on the spot. Moreover, the strikes of 1919 and 1921, which were directed not only against foreigners, but also against the Peking government accused of pro-Japanese feelings, met, as we have already mentioned, a favourable reception and moral support on the part of the Chinese Foreign Ministry, which was deeply interested in spreading the movement for the success of its missions in connection with the Paris Peace Conference and Washington Conference.

The Hongkong Seamen's Strike of 1922, which disorganized the trade between the Orient and the Occident for three months and which found its reflection in the sympathetic strike of the Shanghai

\*Chinese Government Bureau of Economic Information, 1923; The China Year Book, 1924, p. 658.



port workers, was largely due to the support and instigation of the Canton Government.\*

History repeated itself. The Chinese Government as represented by local authorities and influential officials played the same game as the Imperial Government in 1900, but, it should be admitted, this time with much more skill and success.

The U.S.S.R. and the Chinese labour movement, 1921-1924.

The susceptibility of the masses of Chinese workers to the influence of their authorities of every description did not escape the watchful attention of the Soviet Government, and the Third International became keenly interested in getting spiritual and actual control over the Chinese labour movement. As practical men of great experience in dealing with ignorant masses the Soviet and the leaders of the Third International appreciated at once that the way to the heart of a Chinese worker lay not only through the student organizations and extremist factions, who formed a natural bridge between the Soviet agents and the Chinese masses, but also through the Chinese authorities.

The results of direct intercourse with the masses were unsatisfactory. The Chinese workers, brought up in the traditional hatred of all things foreign, met the appearance of foreign and foreign-trained propagandists in their midst with deep suspicion. The distribution of Bolshevik literature made little progress owing to the illiteracy of the masses and their complete indifference to any political or social matters except those affecting their immediate needs. Thus the only course open to the Soviet was to continue their overtures to the students and extremist officials who did not display any particular scrupulousness in regard to the subsidies and gifts which the Soviets generously bestowed upon them for their political needs. In 1921 the Soviets succeeded in concluding a preliminary agreement with the Canton government,† which placed at their disposal the whole machinery of one of the greatest political factions in China—the Kuomintang. The spread of communistic ideas in the period of 1921-1924 did not arouse much apprehension on the part of Chinese politicians nor Chinese or foreigners at large, which, it should be admitted,

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\*Chinese officials in Canton insisted that the strike was spontaneous on the part of the seamen and that the causes and continued inspiration of it throughout were economic (demand for more pay growing out of a real need), but close investigation disclosed the real reasons of the strike. It was the first attempt on the part of the Canton Government to undermine British prestige and economic strength in the Far East. From the very beginning of the strike to the end, it was generally known both in Hongkong and Canton that the seat of authority was in Canton. Throughout all negotiations subsequent to the commencement of the strike no proposition made by the shipowners was ever discussed until the delegates received instructions from Canton. As a matter of fact this is not now denied by the Canton authorities.—AUTHOR.

†The conclusion of this preliminary agreement took place some days prior to the election of Dr. Sun Yat-sen, President of the Republic by the Cantonese Parliament, April 7th, 1921. The agreement contained a general outline of principles, which, from the date of signing the agreement, had to govern the relations between the governments of Moscow and Canton, viz., (1) The Soviet Government at Moscow and the Chinese Government at Canton agreed to recognize each other as lawful governments in their respective territories; (2) Commercial intercourse between the two countries should be resumed forthwith; (3) The Canton government should aid in spreading Bolshevik ideas in the territory of China; (4) the Soviet Government should assist financially the Canton Government whenever the latter desired such financial aid; (5) The citizens of each country should treat each other as citizens of the most favoured nation. The conclusion of this agreement published by the Chinese press in Shanghai had strenuously been denied by the Kuomintang, but the events of 1925 and 1926 proved conclusively the existence of an agreement the gist of which does not materially vary from the above cited principles.—AUTHOR.

was in many respects justified.\* The Chinese were interested only in the political side of the doctrine, which promised them a speedy solution of their international problems, the return of rich foreign settlements and concessions and abrogation of all Treaty obligations. The public speeches of the Soviet representatives, Mm. Joffe and Karakhan, charmed the ear of the Chinese, irrespective of their official or social standing, although the responsible Chinese diplomats realized the double-faced policy of the Soviets† and were somewhat reluctant to cast their lot with the Soviet. It is natural that all these harangues could not remain without an effect on the native psychology and particularly on the unbalanced psychology of the Chinese youth, who since the declaration of 1920, saw in the person of the Soviet emissaries the prophets of a new social era in China.‡ For the first time in the whole history of the country's intercourse with foreign Powers the Chinese had an opportunity of listening to a representative of a Great Power in his official capacity denouncing the policy of other foreign Powers as imperialistic, tending to render China without a strong army, divided, weak, entangled in internal difficulties, and thus incapable of resisting external aggression. Even America, traditionally regarded as China's best friend, was denounced as an imperialistic Power, whose example the Union of the Soviet Socialist Republics refused to follow in China.§ The impression was still greater as the orations were made in the Legation compound at Peking, in the immediate neighbourhood of foreign Ministers representing most powerful nations, whose slightest wish the Chinese government was accustomed to satisfy without any hesitation. And what was by far more strange, they did not arouse a single protest on the part of these governments, whose policy was denounced in no uncertain terms. Was this the result of political and social weakness in

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\*Joint Statement issued by Dr. Sun Yat-sen and Mr. A. A. Joffe, U. S. S. R. Envoy Extraordinary and Plenipotentiary to China, on January 26th, 1923, as a result of their personal interview in Shanghai:—"Dr. Sun Yat-sen holds that the Communist order or even the Soviet system cannot actually be introduced into China, because there do not exist here the conditions for the successful establishment of either Communism or Sovietism. This view is entirely shared by Mr. Joffe, who is further of opinion that China's paramount and most pressing problem is to achieve national unification and attain full national independence, and regarding this great task, he has assured Dr. Sun Yat-sen that China has the warmest sympathy of the Russian people and can count on the support of Russia."

†The Soviet-Japanese Conference at Changchun in September 1923, which was practically the continuation of the Dairen Conference between the Far Eastern Republic and Japan; the journey of Mr. A. Joffe to Japan, and his secret negotiations with the Japanese politicians; refusal to evacuate Outer Mongolia and the position of the Soviet in regard to the question of the Chinese Eastern Railway, which, this time, varied considerably from their position in 1919. On this occasion the U.S.S.R. required from China "due regard to the needs of the Russian Socialist Federated Republic," which meant practically that the railway had to be retained by the U.S.S.R. on the same conditions as before the Russian Revolution, 1917; declaration of the U.S.S.R., September 27th, 1920; Mr. L. Karakhan to Dr. C. T. Wang, November 23rd, 1923; Dr. C. T. Wang to L. Karakhan, January 9th, 1924.

‡Dr. Tsai Yuan-pay, the Chancellor of the National University at Peking, at a banquet welcoming Mr. A. Joffe upon the latter's arrival in Peking, August, 1922, declared as follows:

"Since the penetration of European thought into China a process of social, economic and political changes has developed in this country. The Chinese Revolution was a political one. Now it is tending towards a social revolution. Russia furnished a good example to China, which thinks it advisable to learn the lessons of the Russian Revolution, which started also as a political movement but later assumed the nature of a social revolution."—The China Year Book, 1924, p. 858.

§"Russia will never follow the example of America nor put her signature under a document such as the last Lincheng Note. Russia will never claim the rights of extraterritoriality, nor establish her Courts or administration in China's territory."—Statement of Mr. L. Karakhan at a luncheon given by Dr. C. T. Wang in honour of the Soviet Envoy, October, 1923, Peking.



Europe and Japan, and complete indifference on the part of the United States of America to the fate of their interests in China? Was this the consequence of an absolute paralysis from which the Great Powers suffered as the result of the labour movement in Great Britain and the earthquake and revolutionary fomentation in Japan? Was China's diplomacy—a diplomacy of a country torn by internal strife, without finances or an army, with a government deprived of public respect and support—still able to obtain the return of Shantung province, to secure the abolition of Russian and German extraterritorial privileges, the withdrawal of foreign post offices, the evacuation of foreign troops, etc? Was China able to obtain all this without any support from outside or inside except the voice of some Chinese public bodies and students in the Treaty Ports and Peking? Was it not the same reason which enabled another "sick man," Turkey, to abolish the "unequal treaties" and which compelled the proudest governments in Europe to tolerate communist propaganda directed against them in their own countries and to resort, in China, to diplomatic notes and protracted negotiations in such cases as the Lincheng Affair, while the murder of two German missionaries in 1897 resulted for China in the loss of the whole Shantung province.\* And finally, was it not the direct result of the general fear of Bolshevism and the inability of the Great Powers to suppress it, which enabled Germany to secure immediate relief from the pressure brought to bear upon her by the Treaty of Versailles at the first signs of the possibility of a communist régime in that country? Further events proved that all these questions were answered by the Chinese in the affirmative.

In effect the period of 1921-1924 was marked by an unchecked increase of communist propaganda in China in general and in Shanghai in particular. The Chinese authorities, with very few exceptions, remained absolutely passive to the activities of the Chinese communists and agents of the Third International, leaving the difficult task of dealing with the situation to the foreign administration in the Settlements.†

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\*Germany watched Russia's growing interest in Korea and early in the year 1897 announced her intention of acquiring a naval station in China. During that year, German ships carried on surveying expeditions along the China coast. Fortunately for Germany's schemes two Roman Catholic missionary priests were murdered in Shantung on November 1st of that year. Four days after the murder became known Germany landed a small force and seized the port of Tsingtao, on Kiaochow Bay. On March 6th, 1898, after protracted negotiations between China and Germany Kiaochow Bay was ceded to Germany.

†On June 4th, 1921, members of the Chinese student class carrying flags emblazoned with violently-worded anarchical inscriptions, entered the Hongkew Park at Shanghai, where the Olympic games were in progress, and proceeded to distribute leaflets advocating their views. When an onlooker attempted to stop one of the youths the latter drew an automatic pistol and fired several shots at him and others, fortunately without harmful results. The Police succeeded in arresting six of the demonstrators, including the gunman, who was sentenced by the Mixed Court to 10 years imprisonment and expulsion. Other activities of this nature came under the observation of the Police during the year and led to the successful prosecution of four publishers and disseminators of communistic literature and the seizure and confiscation of large quantities of handbills and pamphlets. The special section of the Criminal Investigation Department which deals with these matters has handled, since 1919, some 27 different kinds of papers, leaflets and handbills pertaining to Anarchism and Communism, all of which were printed in the Chinese language and were circulated amongst the people here by persons who apparently had the financial and other support of communistic agents of other countries. Some of this literature made special appeals to the soldiers of the garrison of this locality, but as few of these were able to read and as no arrangements could be made for undermining of their loyalty through the agency of lectures without bringing about the detection and arrest of the lecturer, the scheme ended in failure. The publications intended for workers however,

In addition to the Students' Union and Chinese Communist Party, which were chiefly responsible for the disseminating of communist and anti-foreign ideas, a number of new societies sprang into being in the Settlement and the adjacent Chinese territory—such as the Non-Christian Students League, the Marx Literature Research Society, and the Young Men's Socialist Society.\*

The main object of all this feverish activity was to attack the foreigners and their privileges in China. Anti-foreignism was the synonym of patriotism and *vice versa*. The communist ideas merged into one feeling—hatred of the foreigners.

The spread of anti-foreign feeling in the Settlement, 1921-1924.

"Political activity on the part of organised bodies in Shanghai continues unabated even in connexion with incidents which are most trivial in themselves and which could scarcely in any way affect either private or national interests," stated the Police Commissioner's report for 1923. "Vexatious agitations are constantly started here on the most flimsy excuses, but banditry, kidnapping, the sack of towns and cities with torture and murder of their inhabitants continue unchecked in the interior without arousing anything more than passing interest."

Indeed, the scheme for the construction of an extension to a Municipal road and the erection of a fire station constituted an infringement of the sovereign rights of China, while the Lincheng outrage, which characterised the actual state of affairs in China, provided only an opportunity for an outcry against "the British imperialists who dared to propose a model corps under foreign officers for the protection of Chinese railways."†

In the meantime, under all these noisy anti-foreign manifestations the provincial and military authorities continued to appropriate the salt revenues forming securities for foreign and domestic loans‡, foreigners were killed in the interior, and internecine war ravaged the country without arousing any serious attempt on the

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have been meeting with better success. The majority of the labourers probably do not fall far short of the soldiers in their ignorance but they can be and have been reached through one or more of the recently formed associations and unions.—Report of Commissioner of Police for 1921, Mun. Council's Report, 1921, p. 61a.

\*"On June 8th, 1922, a search made at houses in Taku Road showed that they were being used as the headquarters of societies such as the Non-Christian Students' League, the Marx Literature Research Society and the Young Men's Socialist Society. The rooms contained a library of 388 volumes in Chinese, Japanese, English, French and German, of a nature in keeping with the extremism suggested by the names of the organizations to which they belonged. Handbills attacking capitalism and Christianity—'its handmaid'—were also found."—Report of Commissioner of Police for 1922, Mun. Council's Report, 1922, p. 77a.

†Diplomatic Body's Note on the Lincheng Outrage, dated August 10th, 1923, Section II, *Guarantees for the Future*, Art. 13. "Measures for Protecting the Railways" and Section III, *Sanctions*, "Demand for punishment of civil or military officials and employees of the Tientsin-Pukow Railway whose complicity with the bandits may be established, or whose conduct may be found to have facilitated the crime either by negligence or lack of foresight."

The first expression of public opinion in Shanghai took place at a public meeting on June 9th, 1923. The resolution passed by the meeting in respect to the responsibility of Chinese officials was identical with the demands embodied in the Diplomatic Body's Note. It went even further and made responsible for the outrage not only the district and railway authorities, but even the President, the Premier, nearly the entire Cabinet, Marshals Tsao Kun, Wu Pei-fu and the Tuchuns of Shantung, Kiangsu and Anhui, excluding only Marshal Chang Tso-lin. However, as soon as the Diplomatic Body's Note became known, the demand for punishment of Chinese officials was found to be unwarranted. The joint note of the Powers was denounced as a conspiracy against China's autonomy in order to establish foreign control over the country. The Shanghai native press exerted itself in accusing the foreigners of all kinds of malicious intentions against China and the Students' Union and Street Unions voiced their loud protest and urged the Government not to accede to the demands of the foreigners and to refuse to pay any indemnity to the victims of the catastrophe.—AUTHOR.

‡In 1921 M.\$18,000,000; 1922 M.\$31,000,000; 1923 the Provinces of Kuancheng, Szechuan, Yunnan and Hunan, the whole of the revenue of Kwangsi and the three Manchurian Provinces and that of Fukien was misappropriated by the Chinese military chieftains.—AUTHOR.



part of the foreign Powers to check it. The foreign Powers in China readily accorded recognition to whatever political group of Chinese succeeded in obtaining temporary control in the capital, in spite of the fact that strong representation of the Diplomatic Body at Peking, strengthened by an energetic move on its part, stopped at once the activity of the most extreme Chinese political factions,\* while the authority of the arbitrary governments at Peking was openly denounced by the Chinese themselves.†

Chinese politics  
and the Kiangsu-  
Chekiang War,  
1923-1924.

The prestige of the Central Government and the foreign Diplomatic Body at Peking was completely shattered after the first Chihli-Fengtien war in 1922, when the capital became the prey of the Chihli party and President Li Yuan-hung was put into the Presidential chair by an arbitrary order of Marshal Wu Pei-fu in defiance of all provisions of the Chinese Constitution. The prestige of the government could not be saved either by the solemn declarations of the President,‡ or his alienation from the Chihli party. It remained a "nonentity" in the eyes of the Chinese public and without power even in the capital. It was apparent that the government was not able to withstand further intrigues of the political parties, who did everything in their power to compel the President to resign and clear the office for the new candidate of the Tientsin faction, Marshal Tsao Kun.§ After brief and hopeless resistance, President Li Yuan-hung was finally compelled on June 13th, 1923, to leave Peking for Tientsin where he was arrested and held a prisoner until the Presidential seals, in the custody of one of his concubines, were surrendered to his rival. On June 16th, 1923, the Parliament, bribed by Tsao Kun and his followers, officially accepted his resignation by a "standing vote," not daring to put it to the ballot as there was no quorum as required by the Constitution.

This series of events naturally aroused a tremendous uproar from every anti-Chihli faction in China. More than 200 members of Parliament left the capital. The Manchurian members were

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\*The Canton Customs Incident of September and December, 1923. In spite of the warning of the Diplomatic Body Dr. Sun Yat-sen announced his intention of taking over the Canton Customs (December 19th, 1923). The Powers chiefly interested—America, Great Britain, France, Italy, Japan and Portugal—made a joint naval demonstration for the protection of the Customs. Dr. Sun Yat-sen issued orders to the local Commissioners of Customs to turn over all revenue to him. This order was not obeyed, and, finally, Dr. Sun Yat-sen had to give in.—AUTHOR.

†It is interesting to quote in this connection Dr. Sun Yat-sen's Manifesto to the Foreign Powers, Canton, June 29th, 1923:

"The Foreign Powers, who must all along have realized the force of their recognition, have been prompted to do so by the notion that they must have some entity, though it be a nonentity, with which they deal. However, by their action, they have given Peking moral prestige and financial support in the shape of revenues under foreign control so that the Peking government has been enabled to exist by virtue of foreign recognition and by that alone. Unconsciously perhaps they have thus done something which they professed that they would not do, that is, intervened in China's internal affairs by practically imposing on the country a Government repudiated by it. They have been supporting a Government which could not exist for a single day without such support and have hindered China from establishing an effective and stable government, which the Washington Conference agreed to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself. By prolonging civil wars, disorder, and disorganization, they have injured the interests of their own nationals whose trade and business with China have naturally suffered loss and inconvenience."

It should be admitted that these views were not only shared by the radical elements of the country, but by almost all China's political and social circles.—AUTHOR.

‡Presidential Mandate of the 1st moon of the 12th year of the Republic (1923) denouncing the militarists.

§Demonstration of General Feng Yu-hsiang's troops; police strike of June 9th and 10th, 1923.

recalled to Mukden in a body. Nearly all the Southern members left for Shanghai. A plan was rife to form in Shanghai an opposition party and to set Li Yuan-hung up in Shanghai as President of China. These plans failed very soon, however, while the presidential election at Peking was set for September 12th, 1923. However, the Parliament could not again assemble a quorum and it required a few weeks more before the followers of the new President succeeded in bribing the Parliament on a huge scale. Each member received \$5,000 and the factional leaders \$10,000. Of course, the anti-Chihli party could easily have prevented the election by a sufficient expenditure of money, but they came to the conclusion that the best way to ruin their political enemies was to put Marshal Tsao Kun in the Presidency.

Tsao Kun was elected President of the Republic of China on October 5th, 1923, and three days later was recognized by the Diplomatic Body, which accorded its recognition on condition that the new government agreed to pay the indemnity for the Lincheng outrage.

This prompt recognition did not alter the situation. The whole country was divided into inimical parties, an open clash between which was only a question of time. The last trace of Parliamentary prestige was ruined forever,\* while the conduct of the Diplomatic Body aroused great indignation in China and strengthened the impression concerning the weakness of the foreign Powers and the unscrupulousness of their policy in China.

Indeed, only a body without self-respect and real power could fall to such an extent as to bargain with mean political adventurers for the acceptance of terms which they otherwise had not the power to impose upon China, a "sick man" even in the eyes of the Chinese themselves.

We are very far from attributing to the unhappy policy of the Foreign Powers in China the fact that in 1924-1925 Shanghai became the arena of an outburst of Chinese interfactional struggle and anti-foreign movement, but we cannot overlook the fact that the traditional sanctity of Shanghai in the eyes of the Chinese was largely due to the prestige of the foreigners and the fear of a possible armed intervention on their part in the event of its violation. The well-known agreement between the rival generals Lu Yung-hsiang, Director-General for the Reorganization of Military Affairs in Chekiang, and Ho Feng-ling, Military Governor of Shanghai, on one side, and Chi Hsieh-yuan, Military Governor of Kiangsu, on the other, signed and sealed in August 1923, was more due to the pressure brought to bear upon these officials by the Consular Body at

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\*"The shameless, greedy and rough members of Parliament are led by Tsao Kun for a long time"—stated a manifesto of the Chinese Communist party at Canton, dealing with the current events of 1922-1924. "If there are honest and clean elements among them why did they not come to the foreground? The organizations of merchants, students and workers have expressly denied the right of the Parliament to represent the people. Which elements of the people are represented by the Parliament? The proposal to remove it to the South is a proposal contradictory to the opinion of the people. When the Parliament will finish the Constitution and elect the President the people will declare that the decisions of the Parliament are valueless."

It should again be admitted that as in the case with Dr. Sun Yat-sen's manifesto to the Foreign Powers of June 29th, 1923, the views set forth in this manifesto were shared by the whole Chinese intelligentsia, independently of their political and social sympathies.—AUTHOR.

Shanghai than to any entreaty of the Chinese gentry and their own desire to maintain peace for the benefit of the nation.\*

In 1924 the Shanghai Consular Body failed to prevent the outbreak of hostilities in the immediate vicinity of the Settlement. The Shanghai area was not neutralised as was desired by the Consular Body and the Shanghai gentry.†

The prestige of both of them was too low to stop the new Peking Government and its ally, the Military Governor of Kiangsu, from endeavouring to gain the rich Shanghai-Woosung district, with its arsenal and naval base, from their political enemies, the Governors of Chekiang and Shanghai.

As a matter of fact, the port of Shanghai, with its surrounding districts belonging geographically to the Kiangsu Province, had always been the object of bitter dissension between the Kiangsu and Chekiang military and civil authorities. This dissension could not be allayed by the organization of a separate administrative unit under the direct control of the government at Peking as this subordination had always been only nominal. Meanwhile the possession of Shanghai was a matter of great importance to either political faction in China. Shanghai was not only the greatest and richest commercial port in China, but, what was by far more important in the eyes of the Chinese, it was the centre of China's political and social thought.

On September 3rd, an outpost action was fought at Quinsan and the curtain raised on war in the neighbourhood of the Settlement of a character which has been prevalent in other parts of China for many a year. Headed by Chi Hsieh-yuan, the Kiangsu army moved on Shanghai, and Lu Yung-hsiang, commanding the Chekiang army, formed a defensive line from Liuho to Minghong.

The local war soon had its larger counterpart in the North. On September 18th, three Fengtien aeroplanes, under the direction of General Chang Hsueh-liang, bombed Shanhaikuan, and the Peking Government issued a punitive mandate against Marshal Chang Tso-lin, appointing Marshal Wu Pei-fu commander-in-chief of the national armies. This meant the opening of the second Chihli-Fengtien war.

The Chekiang defence forces were slowly falling back upon Shanghai and on September 9th, as it was clear that hostilities would proceed in the immediate neighbourhood of the Settlement, the Municipal Council was compelled to declare a state of emergency.‡ The Shanghai Volunteer Corps was mobilized, and, at the request of the Council made to the Consular Body, naval parties were landed from the warships in harbour.§ There was no immediate danger that the belligerents would trespass on the area of foreign administration, but there was a probability that

\* "The authorities of the two provinces of Kiangsu and Chekiang, acting in accordance with the wishes and desires of the people for peace and protection, agree to refrain from entering into any outside alliance that will result in military or political troubles." Statement of the Agreement signed by Military Governor of Chekiang, Kiangsu and Shanghai, Art. 2. "North-China Herald," August 25th, 1923.

†Mun. Council's Report 1924, p. 95.

‡Mun. Council's Proclamation, September 9th, 1924.

§About 1,800 men which, together with 1,376 volunteers under the command of Colonel W. F. L. Gordon, O.M.G., D.S.O., Commandant of the Shanghai Volunteers, formed the defence force of the Settlement.



thousands of disorganized Chekiang troops, in case of defeat, might fall back on Shanghai in the desire to avail themselves of the refuge afforded by neutral territory. The prospect of hordes of leaderless and fugitive soldiers making for the shelter of the Settlement caused the Council to take every measure in its power to ensure to the residents of the Settlement essential safety. A cordon of defence was drawn around the Settlement and the roads leading into Chinese territory were barricaded.

For more than one month the position of the Chekiang army was satisfactory, and successfully resisted all attacks of the numerically superior forces of Kiangsu Province strengthened by Marshal Wu Pei-fu's and the Fukien General Sun Chuan-fang's troops. However, on October 12th, the latter succeeded in capturing Sungkiang, a very important strategical point in the rear of the Chekiang army. The position of the Chekiang army then became very critical, particularly as one of the divisional commanders\* whose troops were occupying the most responsible sector of the Chekiang defence, began to display an ill-concealed sympathy towards the Kiangsu cause. Under his pressure the military conference held by the Chekiang leaders at midnight October 12-13 decided to abandon the struggle. Generals Lu Yung-hsiang and Ho Feng-ling and their followers accordingly embarked for Japan, abandoning to their fate the troops who for years had given them allegiance and who for six weeks previously had fought loyally for their cause.† As soon as the news of their leaders' flight reached the troops at the front, the white flag was raised and a general retirement on Shanghai began. On October 14th, the Kiangsu troops reached Shanghai North Station and occupied Lunghua and the Arsenal.

In the meantime a movement was started to have the Chekiang troops reorganized under the leadership of General Hsu Shu-cheng, better known as "Little Hsu," in order to continue the struggle.

It was, indeed, a very critical moment for the foreign and Chinese communities at Shanghai, as it was apparent that any further struggle might proceed directly on the borders of the Settlement. However, prompt and stern measures undertaken by the Council prevented the continuation of useless bloodshed. By order of the Council General Hsu Shu-cheng was arrested in consequence of his having entered the Settlement contrary to an order made by the Council on July 5th, 1921, forbidding him to do so,‡

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\*General Chen Lao-san, Commander of the 4th Chekiang Division.

†Mun. Council's Report, 1924, p. 54.—"It is a remarkable fact that this proceeding evoked no word of adverse comment or reprobation in the local Chinese press" remarks Major A. Hilton Johnson, Acting Commissioner of Police, in his annual report for 1924, which we have cited.—AUTHOR.

‡Mun. Council's Report, 1924, p. 54. See "Shanghai: Its Mixed Court and Council,"—1842-1924, p. 29.

In connection with the arrest of General Hsu Shu-cheng, the latter through his son Hsu Dor-ling and his attorneys Messrs. Faison and Heath, filed October 20th, 1924, with the Shanghai Mixed Court an application for Writ of *Habeas Corpus* against the Commissioner of the Shanghai Police, his Deputies and Agents on the ground (1) that the petitioner is a citizen of the Republic of China and resident of the Settlement for three and a half years; (2) that on October 15, 1924, the defendants unlawfully arrested him and have since that date unlawfully and forcibly held him under arrest at his residence at 34 Nanyang Road. The petitioner prayed that the Court issue an order directing the Commissioner of Police, his deputies and agents, immediately to produce the petitioner before the Court and show legal cause why he is restrained of



and six days later, having elected to proceed to Europe, he left Shanghai for Hongkong. The immediate danger passed, though the final disarmament and evacuation of the defeated Chekiang soldiers took some time.

The occupation of Shanghai by the Kiangsu army resulted, as could be expected, in an entire change in the Chinese administrative personnel of the Chekiang Province and Shanghai, but all appointments, except the appointment of General Sun Chuan-fang as Tuli of the Chekiang Province, were shortlived. The fate which befell the anti-Chihli forces in Shanghai was the fate which was prepared for them in the North.

On October 23rd, 1924, a group of Generals headed by General Feng Yu-hsiang known as the Christian General, and ally and subordinate of Marshal Wu Pei-fu, disarmed the President's body-guard, arrested the President and his immediate followers and Ministers, and proclaimed the cessation of hostilities against Feng-tien.\* Within the short space of ten days Marshal Wu Pei-fu was compelled to embark with his closest followers and some 1,000 soldiers on board the transport-vessel "*Hengli*," and take flight in an unknown direction, accompanied by the loud jubilation of his enemies. As in the case of the treacherous act of General Lu Yung-hsiang and Ho Feng-ling against their gallant troops in Shanghai, Chinese public opinion overlooked the treachery of General Feng Yu-hsiang and his associates against one of China's few honest men and brave soldiers, whose only fault was that he believed that by autocratic methods and rude force it would be possible to consolidate the dismembered body of China. Chinese public opinion also kept silence in regard to the steps taken by the Shanghai Municipal Council for the preservation of the peace and order in the Settlement, though they were in many respects a direct encroachment on China's sovereign rights if Shanghai can be taken as an integral part of China, and everything were to be regulated by the Treaties and "Land Regulations for the Foreign Community North of the Yangkingpang."

In effect, the proclamation of a state of emergency, the landing of foreign naval forces,† barricading of the Settlement roads, occupation of a part of Chinese territory for strategical purposes, and, finally, the forcible disarming of Chinese troops‡ and

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his liberty. This exceptional case in the history of the Mixed Court was laid before Messrs. Kwan and A. J. Martin, Senior British Assessor, who refused to entertain the application on the ground that the Police as a Department of the Municipal Council is not amenable to the jurisdiction of the Mixed Court, the proper forum for the filing of such an application being the Court of Consuls.—AUTHOR.

\*In this unprecedented political act, even in Chinese modern history, General Feng Yu-hsiang was assisted by Dr. C. T. Wang who, during 1922-1925, played a very prominent role in China's politics as Minister of Foreign Affairs and Director-General of Commission for Sino-Russian Affairs.—AUTHOR.

†There were at one time as many as thirty-one men-of-war concentrated in the harbour of Shanghai and manned by more than seven thousand officers and men, viz:—British, 3 cruisers, 3 gunboats—1,452 men; U.S., 1 cruiser 10 T.B.D's, and 4 miscellaneous—2,897 men; French, 2 cruisers—1,104 men; Italian, 1 cruiser—317 men; Portuguese, 1 gunboat—157 men; Japanese, 2 cruisers, 4 gunboats—1,038 men. Total 31 ships and 6,925 men. The landing force consisted of: British, 375; French, 400; Japanese, 450; U.S., 400; Italian, 100, and Portuguese, 400. Total 1,765 men.

‡Mun. Council's Proclamation re Emergency Measures, September 9th, 1924; Municipal Notifications No. 3307 re Chinese Troops in the Settlement, November 8th, 1924; Municipal Notification No. 3297, re Undesirable Characters, September 18th, 1924.

expulsion of a general and other undesirable Chinese from the Settlement, formed a direct violation of the sovereign right of any State, which did not expressly concede such authority to other Powers, and which, we know, is not the case with China in Shanghai.

The absence of protest on the part of the Chinese public was particularly strange as only a month prior to the outbreak of the inter-provincial war, Chinese public opinion was roused against the Council's attempt to widen the North Szechuen Road Extension as an infringement of China's sovereignty. Later in the year a movement was started against the construction of roads by the Council beyond the Western boundary of the Settlement. Similar agitation against the Council was carried on by a section of the Chinese press in connection with the death from kidney disease on August 13th, of a coolie in police employ as the result, it was alleged, of serious injuries received from a foreign police officer. In addition to that, a most lively propaganda against foreigners had been conducted in January and May for the immediate rendition to China of all leased territories, the abolition of extraterritoriality *in toto* and the elimination from China of so-called foreign imperialism. All this agitation, however, ceased as soon as the first reports of the guns were heard. It subsided and died out. And, it should be emphasised, it ceased and died out with the influx of 250,000 Chinese refugees who fled into the Settlement seeking the protection of the foreigners from the horrors of the civil war, in the absolute confidence that such a protection would be afforded to them without a word.

It was apparently a hopeless thing to arouse indignation amongst these masses against the methods of foreign administration at Shanghai, and the masses of their numerous relations resident in the Settlement. It was probably even dangerous to tell them of the necessity of an immediate rendition of the Settlement to the Chinese authorities. Nobody knew what they would say in reply, and what might have been taken by some people as a true expression of Chinese public opinion. The position was so awkward that the Chinese Ratepayers' Association at Shanghai,\* being usually in opposition to the very principle of foreign administration in the Settlement, was driven to express its appreciation of the Council's work for the protection of Chinese property and lives, carefully avoiding even the mention of facts which one month ago could have led to riots and a general strike.

The position of the Municipal Council of the International Settlement in regard to the protection of the population in 1924 was very difficult. Since 1919 its rights and privileges had been seriously challenged by a number of international acts which, dealing primarily with other questions, still had a bearing upon the very principles of its existence. Accepting one of the points of the

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\**Translation of note to the Council from the Chinese Ratepayers Association, dated December 12th, 1924.*

"During the recent Kiangsu-Chekiang hostilities the Local Defence Forces rendered excellent service in maintaining peace and order as well as protecting the local community, for which all are greatly obliged. Accordingly, the writers have prepared a commemoration tablet to be presented to the Council at noon of the 16th instant by the Chairman Fong Chai-pah, Vice Chairman Yuan Lu-tan, and Secretaries and members Lo Jen-san, Woo Wen-chai and others." *Mun. Council's Report, 1924, p. 100.*

Chinese delegation at the Washington Conference that "*in the interpretation of instruments granting special rights and privileges, the well-established principle that such grants shall be strictly construed in favour of the grantors,*" the Conference upset the whole system of precedents, which had been the real basis of the foreign administration in the Settlement. This system was especially dependent upon the indefiniteness of the original Treaties and their interpretation, not in favour of the grantor, but in favour of the grantee, and this is particularly true in respect to the matters relating to the traditional political neutrality of the Settlement, the question of asylum afforded by the foreign community to the Chinese political refugees and the right of expulsion of undesirables from the Settlement.

We do not propose to deal with this matter in the present volume, as it was, in our opinion, sufficiently illuminated in its predecessor—"Shanghai: Its Mixed Court and Council," but we wish to point out that if in the past every action of the foreign administration of the Settlement received the prompt support of the Consular Body at Shanghai and the sanction of the foreign Ministers at Peking, since 1924 the Municipal Council has been left entirely to its own forces and authority. It is not a secret that the foreign naval forces were landed not for the defence of the Shanghai community as a body, but for the protection of individuals—Britishers, Americans, Italians, Japanese, etc. The Consular and Diplomatic support was also accorded not to the "Foreign Community North of the Yangkingpang" as a whole, but to the particular sections of British, American, Italian, Japanese and other foreign residents.

The sudden changes in the political and social situation in the Settlement could not stop the process of the development of the municipal system in the Settlement. It moved on by slow degrees towards the solution of problems which grew more and more complicated in view of the inimical tendency of the Chinese public opinion towards the cause of the foreigners in Shanghai, which rightly or wrongly, was held as true expression of the opinion of awakened China. The foreign community in Shanghai had to complete an immense task at its own risk without counting upon any support from outside unless it wished to see its personal safety and welfare endangered by being dragged into Chinese politics. It had either to ascertain its rights and privileges of developing resources free from any interference on the part of the Chinese political and social parties, or become the victim of China's chaos. In the next few chapters we will make an attempt to analyze the history of these problems and the methods of their settlement applied by the foreign community, in the vain hope of getting out of that turmoil into which it has been thrown since 1919 by the political and social disorder in China and the futility of Western policy in China, which reflected the actual state of political and social affairs after the Great War in Europe, the labour movement of 1921-1922, and the earthquake of 1923 in Japan.



### CHAPTER III.

#### SETTLEMENT EXTENSION AND ROADS BEYOND SETTLEMENT LIMITS, 1844-1905.

The importance of the diplomatic prestige of the Foreign Powers in China was particularly felt in questions connected, directly or indirectly, with the extension of the foreign settlements and concessions in China and the right of their municipalities to construct, own and police roads beyond their limits.

The right of direct diplomatic intercourse with the Chinese Government and its agents formed an exclusive privilege of the Foreign Ministers and Consuls and was vigilantly preserved from any attempt of encroachment on the part of the various foreign municipalities in China. This in course of time enabled the Ministers and Consuls to convert the privilege of representing the municipalities before the Chinese authorities into an actual and unlimited authority which, as far as Shanghai was concerned, was obviously against the spirit of the respective provisions of the Land Regulations.\* This, of course, ultimately resulted in placing in an anomalous position the Shanghai community and its Council in the eyes of the Chinese. The latter went further than the diplomats. They refused in some instances to recognise the binding force of the Land Regulations and treated the Council of the International Settlement either as a British or as an American civic enterprise subordinated entirely to the local Consular Body.†

The fundamental Treaties‡ granted to foreigners only the right to reside for the purpose of carrying on their mercantile pursuits without molestation and restraint at the cities and towns of Canton, Amoy, Foochow, Ningpo and Shanghai,§ and provided that "the number of houses built or rented will be reported annually to the said local officers (Chinese) by the Consuls for the information of their respective Viceroys and Governors, but the number cannot be limited seeing that it will be greater or less according to the resort of merchants." || Not a single word appears respecting applications for extension of area of "ground and houses of the foreigners, set apart by the local officers in communication with the Consul." \*\*

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\*Land Regulations, Regulation IX, XV, and XXVIII. See "Shanghai: Its Mixed Court and Council," pp. 357, 366.

†Mr. W. S. Emens, U.S. Acting Consul-General, to the Taotai, July 6th, 1893; Taotai's reply, July 22nd, 1893.—Mun. Council's Report, 1893, pp. 246, 247; Commissioner for Foreign Affairs to the Senior Consul, October 27th, 1921.—Mun. Council's Report, 1921, p. 210A; Shanghai District Magistrate to the Commissioner for Foreign Affairs, November 20th; Commissioner for Foreign Affairs to the Senior Consul, November 25th, 1923.—Mun. Council's Report, 1923, p. 271.

‡Treaties of August 29th, 1842; July 3rd and October 24th, 1844; Supplementary Treaty of October 8th, 1843; Treaty of Tientsin, June 26th, 1858.

§Treaty of Nanking, August 29th, 1842, Art. II.

||Supplementary Treaty of October 8th, 1843, Art. VII; Identical provisions in the French Treaties of September 24th, 1844, Art. XXII, and June 27th, 1858, Art. X.

\*\*In 1898 the Chinese opposition to the Settlement extension was formulated in the following terms set forth in the letter of Taotai Tsai to the Senior Consul, March 13th, 1898: (1) That it is impossible to spare a single foot or inch outside of the Settlement to be set apart for a new Settlement; (2) *That if the number of foreigners settling in this place is always increasing, the number of natives is increasing fivefold and more*; (3) That the foreigners do not live only within the Settlement, but a great

According to the Treaties only one fact is beyond dispute. It is that the foreigners were entitled to reside, lease land, and build houses in certain parts of Chinese territory—the Treaty Ports—without being necessarily confined to the “ground and houses” set apart by the local Chinese officers and Consuls. All other rights, including the right of a further extension of the settlements pertained to questions, the nature of which could have and, as we will see later, had been disputed by the Chinese authorities.

In the opinion of the latter, the overcrowding of the settlements, advanced by the foreigners as a main reason for their extension, was due entirely to their own fault. It was due to the unrestricted admission of Chinese into the confines of the settlements, in spite of the express provisions of respective regulations.\* As far as the International Settlement at Shanghai was concerned this express provision† was intentionally ignored against the wishes of the Chinese authorities by the foreigners themselves.

In fact, the restriction enjoining the native inhabitants “from selling or renting land or houses to other Chinese and the foreigners from building houses for renting to or for the use of Chinese in the Settlement” contained in Art. XVI of the Land Regulations of 1845 had already been omitted in the subsequent set of Land Regulations, 1854. It was omitted partly on account of the impossibility of its enforcement due to the irresistible influx of Chinese into the Settlement during the Taiping rebellion and partly on account of its conflict with the mercantile interests of the Foreign Community.‡

many of them rent land and erect houses outside the Settlement, without meeting any obstruction on the part of the native authorities in doing so; and (4) That there is no clause in the Treaties providing for an extension or reduction of the Settlement in proportion to the larger or smaller number of the foreign residents.

In connection with this dispatch it is interesting to recollect the letter of Sir Frederic Bruce to Mr. Medhurst, H.B.M.'s Consul at Shanghai, September 8th, 1862, in which he stated *inter alia* as follows: “Great Britain has no interest except in providing a secure place for British trading establishments; and whatever inconveniences may arise from the conversion of the Settlement into a Chinese town, I do not think that Her Majesty's Government will be induced to seek a remedy by extending its jurisdiction over a large section of the Chinese population.”

\*Mr. H. G. Simms, Acting Chairman of the Mun. Council in his letter to the Senior Consul, November 19th, 1921, states *inter alia* with regard to the reasons advanced by the foreigners for the expansion of the confines of the Settlement as follows: “Such a concession by the Chinese Government was of course the logical and reasonable *quid pro quo* of the privilege extended by the Settlement authorities to Chinese traders, merchants, shopkeepers, and others, to reside in the Settlement, so long as they obeyed the regulations.” (Statement based on Taotai's Proclamation of February 24th, 1855, “North-China Herald,” March 24th, 1855.—AUTHOR.)

†Shanghai Land Regulations, 1845, Art. XVI.

‡In this connection it is interesting to cite Sir Rutherford Alcock's “*Capital of the Tycoon*,” Vol. I. p.p. 37, 38, in which he records one of the most typical opinions shared at that time by the foreign business men in Shanghai:

“No doubt,” said to him one of the most influential residents of Shanghai, whose identity Sir Rutherford leaves undisclosed, “your anticipations of future evil have a certain foundation, and, indeed, may be correct enough—though something may be urged on the other side, as to the advantages of having the Chinese mingled with us, and departing from the old Canton system of isolation—but upon the whole, I agree with you. The day will probably come, when those who may be here will see abundant cause to regret what is now being done, in letting and sub-letting to Chinese. But in what way am I and my brother landholders and speculators concerned in this? You, as Her Majesty's consul, are bound to lose to national and permanent interests that is your business. But it is my business to make a fortune with the least possible loss of time, by letting my land to Chinese, and building for them at thirty or forty per cent. interest, if that is the best thing I can do with my money. In two or three years at farthest, I hope to realise a fortune and get away; and what can it matter to me, if all Shanghai disappear afterwards, in fire or flood? You must not expect men in my situation to condemn themselves to years of prolonged exile in an unhealthy climate for the benefit of posterity. We are money-making, as much and as fast as we can, and for this end all modes and means are good which the law permits.”



However, owing to the diplomatic pressure brought to bear upon China the limits of the Settlement were, under the plea of adjustment of the Settlement boundaries,\* considerably extended in November, 1848, and again in June, 1893. Of course, this extension could not satisfy the real needs of the Foreign Community for further expansion of the Settlement territory.

The native population, attracted by the advantages afforded by the Settlement, was steadily increasing. The number of mills, filatures, and similar industrial enterprises was also rapidly growing. It was evident that the amount of space available within the Settlement limits was not sufficient to give, without extreme overcrowding, proper accommodation for this expansion, which carried with it danger to the health of the foreign residents through the close proximity of a large native population.

The Council, therefore, not being able to enter itself into direct negotiations with the Chinese authorities, addressed to the Consular Body on January 3rd, 1896, a letter in which it requested assistance towards obtaining such an extension of the Settlement area as would provide ample space for this development.

Settlement Ex-  
tension of 1898.

As no progress in the negotiations had been reached during the many months which had elapsed since the Council's letter, the Council, fully realizing the probability of opposition on the part of the Chinese, decided to take steps on its own account, and to attempt to strengthen the grounds for the extension, already advanced, by obtaining the good will and co-operation of the Chinese gentry and resident Chinese officials.†

It appeared that, while the official negotiations dragged on from month to month, the Council succeeded in less than three months to clear the atmosphere of distrust which surrounded the problem. It was ascertained that the local officials and gentry had little or no opposition to offer to the scheme, and that the native landowners, as a class, were favourably disposed toward it.

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\*The extension of the North-West boundary of Hongkew in 1893 was effected not without difficulty owing to the opposition on the part of the Chinese officials and some of the native population. It was preceded by an incident in connection with the construction of a bunding along the Yangtzepoo Creek. The infuriated villagers of the district made an attack upon the Yangtzepoo Police Station, which was successfully repulsed. The villagers thought that the construction of a bunding would prevent the in-flow of the tide and interfere with the irrigation of their fields. Under these circumstances they became easily the prey of agitators who incited them to stop the work by using violence. Strong protests were lodged by the Council through the Consular Body with the Taotal and severe punishment of the ringleaders was asked from the Chinese authorities.

The adjustment of the North-West boundary of Hongkew was a matter of great importance to the Foreign Community. It put an end to the indefiniteness with regard to the Council's jurisdiction over a tract of about 7,800 mow, which since 1886 had been always disputed by the Chinese authorities. On November 12th, 1892, the Council undertook definite steps towards the solution of this indefiniteness and addressed a letter to the Senior Consul to that effect. As a result of this letter the Taotal appointed a Committee to report upon the boundary, and subsequently Mr. W. S. Emens, U. S. Vice Consul-General, representing the Consular Body, and the Municipal Engineer and Assistant Engineer on behalf of the Council met the Committee in order to arrange the matter with them. The work of surveying and plans of the new boundaries were successfully completed in August, 1893.—Mun. Council's Report, 1892, pp. 132-134; 1893, p. 205.

Mun. Council to the Senior Consul, November 12th, 1892, *ibid*, p. 204.

Mr. J. A. Leonard, U.S. Consul-General, to the Mun. Council, February 20th, 1893; Taotal to Consul-General Leonard, received, February 20th, 1893; Mr. W. S. Emens, U.S. Vice Consul to the Senior Consul, June 29th, 1893; to Taotal Nieh, July 6th, 1893; Taotal Nieh to Mr. W. S. Emens, Acting U.S. Consul-General, July 22nd, 1893.—Mun. Council's Report, 1893, pp. 243-247.

†Mun. Council to the Consular Body, September 22nd, 1897.

The success of practically the first efforts of the Council to solve one of the most complicated problems directly with the Chinese encouraged the Council to further steps.

Relying on the assurance heretofore received of a sincere desire on the part of the Consular and Diplomatic Bodies to promote the development and prosperity of the Settlement,\* the Council came to the conclusion that the limits proposed in January, 1896, were no longer sufficient to ensure the further and rapid growth of the industrial life in Shanghai. It desired to extend the settlement boundaries so as to include a considerable portion of land adjoining the Jessfield Road, in the western district, the Paoshan district and Pootung, where foreigners had purchased large tracts of land and where mills had been erected.†

Advancing this scheme, the Council emphatically emphasized that no taxation would be levied on native occupiers of land until such time as the benefit of adequate roads, properly lighted and policed, was enjoyed by them.

As a matter of fact, in forwarding its first scheme in 1896 and the present one for the extension of the settlement, the Council was very little concerned respecting a new source of municipal revenue. The main point was the securing of a new area capable of accommodating the growth of the Settlement and of ensuring its safety, peace and order, as neither the sanitary condition of the adjacent Chinese territories nor their administration gave this assurance. In its efforts the Council was wholly upheld by the entire community‡ irrespective of its cosmopolitan nature. The latter had every right to expect that their just interests would similarly be upheld by the representatives of the foreign Powers at Peking to whom, as a body, the request of the amalgamated Settlement had been addressed§. However, as events showed, it did not so happen.

Anglo-French  
Conflict of 1898 in  
regard to the ex-  
tension of their  
respective settle-  
ments.

The divergence of opinions and the methods of administration of the settlements in relation to the local Chinese administration, which had caused in 1862 the withdrawal of the French Concession from the municipal administration of the amalgamated British and American Settlements, resulted this time in an intrigue which undermined the mutual efforts of the International Settlement and the French Concession for the extension of their territories.

Since 1874 the French authorities had endeavoured to extend their Concession in the direction of Siccawei, but the first section of a road, leading thither across a cemetery of the Ningpo Guild, gave rise to difficulties which culminated in a riot.|| The scheme had for the time being to be abandoned, but in 1898 it was revived

\*Diplomatic Body to the Tsungli Yamen, March 25th, 1926.

†Mun. Council to the Senior Consul, September 22nd, 1897.—Mun. Council's Report, 1897, 268.

‡Director of the Chinese Cloth and Yarn Administration to the Mun. Council, June 4th, 1894.

§Shanghai General Chamber of Commerce to the Mun. Council, October 16th, 1897; to H.E. Sir Claude MacDonald, Dean of the Diplomatic Body at Peking, October 12th, 1897.—Mun. Council's Report, 1899, pp. 270-272.

||See "Shanghai: Its Mixed Court and Council,"—1844-1924, pp. 9-16.

||Stirred by the guild, a mob gathered in that locality on May 3rd, 1874, outraged foreigners and set fire to several houses. The event took such a serious turn that the volunteers were mobilized and detachments from the French men-of-war were landed. Six of the rioters were shot in a fracas with the troops, and peace was restored. Notwithstanding this the French authorities had to pay compensation to the families of the killed and to stop the work.—AUTHOR.

with new force. The compulsory surrender of the cemetery was decided upon by the Taotai and the French Consul-General. The value of the land being duly assessed, strong precautionary measures were taken and on July 16th, 1898, the walls of the cemetery were demolished, resulting in a riot the next day, quelled with over twelve fatal casualties on the part of the rioters.

These proceedings aroused great indignation amongst the Chinese, but the French authorities continued to press for an extension of the Concession, and this time not only in the direction of Siccawei, but also on the right bank of the Huangpoo and the Pootung frontage of the French Concession, where large tracts of land were owned by British and American shipping firms. There were immediate protests on the part of the latter, on the ground that the French authorities claimed jurisdiction over lands and properties not situated in the French Concession.\* These protests were upheld by the British and American Ministers at Peking, who referred the matter to their respective Home Governments.† As a result strong representations against the proposed extension of the French Concession were made at Peking, and when, in spite of all protests, the French Consul-General proceeded to Nanking to negotiate with the Viceroy on the subject of the extension, the British Government, on December 27th, 1898, dispatched a third man-of-war to Nanking to afford "moral support to the Viceroy in resisting the French demands."

On the other hand, the French Minister protested against the extension of the International Settlement on the ground that it included land assigned to an extension of the French Concession‡ by an arrangement made in 1896 through the foreign representatives in Peking. In consequence the whole matter came to a deadlock.

As far as the Chinese authorities were concerned they were opposed to both extensions, and particularly to the extension of the International Settlement, as the proposed scheme included the whole Paoshan hsien, a very thickly populated district which, in the opinion of the Chinese authorities, was quite a separate administrative district from the Shanghai hsien, not included in "an open port in accordance with Treaty."§

The actual reason, however, underlying the opposition to the expansion of the Settlement into the Paoshan district was the apprehension on the part of the Chinese Government at Peking that the Shanghai Railway Station of the Shanghai-Woosung line would fall into the hands of foreigners.|| There were also involved personal interests of the local mandarins which made the local Chinese authorities very reluctant to assent to the scheme.

\*See "Shanghai: Its Mixed Court and Council,"—1844-1924, pp. 23, 24.

†Sir C. MacDonald to Lord Salisbury, September 16th, December 5th, 1898.—China, No. 1 (1900) p.p. 275, 312; Mr. Conger to Mr. Hay, January 5th, 1899, U.S. For. Rel., 1899, p. 143.

‡Mr. Conger to Mr. Hay, March 24th, 1899, U.S. For., Rel. 1899, p. 145. Mr. H. O. Bax-Ironside to the Marquis of Salisbury, May 15th, 1899, Peking. The Blue Book, China No. 1 (1900).

§The Foreign Office to the China Association, August 18th, 1908, China Association Report, 1908-9, p. 89.

||Minutes of the Mun. Council's Special Meeting, April 28th, 1899; Mr. H. O. Bax-Ironside to the Marquis of Salisbury, May 9th, 1899; The Blue Book, China No. 1 (1900);



In reply to the letter of Mr. O. Stuebel, Consul-General for Germany and Senior Consul, dated February 28th, 1898, inviting the local Chinese authorities to enter into negotiations on the subject with the Consular Body in accordance with Art. XXVIII of the Land Regulations, Taotai Tsai stated flatly "that it will be for the best to conserve the present state of things."\* The Viceroy at Nanking, on his part, also declined to support the scheme—as proposed by the Council).†

In view of the deadlock to which the question had thus been brought there was no other option left to the Council but to appeal again for public support. The facts were brought to the notice of the General Chamber of Commerce and it was urged that the weight of the Chamber's influence be brought to bear.‡

As a result of this a Special General Meeting of the Chamber was held on June 17th, 1898, which unanimously decided to address the Ministers at Peking individually with the most earnest request to give the matter their special attention. Furthermore, in the beginning of July, 1898, Mr. J. S. Fearon, Chairman of the Council, visited Peking with the object of enlisting the personal support of members of the Diplomatic Body. His representations were favourably received, but the introduction of questions of an international nature, i.e., the Anglo-French conflict of 1898, appeared still to block any progress toward the solution of the problem.§

But if the controversy between England and France enabled the local Chinese officials to defend their position, the same controversy ensured to the Foreign Community the ultimate success of their claim. The questions concerning the extension of the International Settlement and the French Concession in Shanghai were raised to a serious international problem, and after the dispute between England and France was settled,|| the British, American and German Ministers at Peking addressed indetical notes to the Tsungli Yamen pressing the Chinese Government to instruct the Viceroy at Nanking to grant the extension asked by the Consuls and the Council.\*\*

On the 13th April, the Ministers of the Tsungli Yamen informed the Foreign Legations verbally that they had written to the Viceroy at Nanking in accordance with the request conveyed in the notes.

Meanwhile, the Council took measures to expedite the matter. It accepted the offer of Mr. J. C. Ferguson, of the Nanyang College, to go to Nanking and interview the Viceroy; this interview resulted in the appointment by the Viceroy of Mr. J. C. Ferguson as one of two deputies to negotiate in the matter of the Settlement extension and, subsequently, in the granting of a considerable portion of the proposed extension, but no land in the Paoshan district was included therein. The Council decided that it was expedient in the public

\*Taotai Tsai to the Senior Consul, March 13th, 1898; Senior Consul to the Mun. Council, May 22nd, 1898—Mun. Council's Report, 1898, pp. 280, 281, 282.

†Senior Consul to the Mun. Council, June 30th, 1898, *ibid* p. 283.

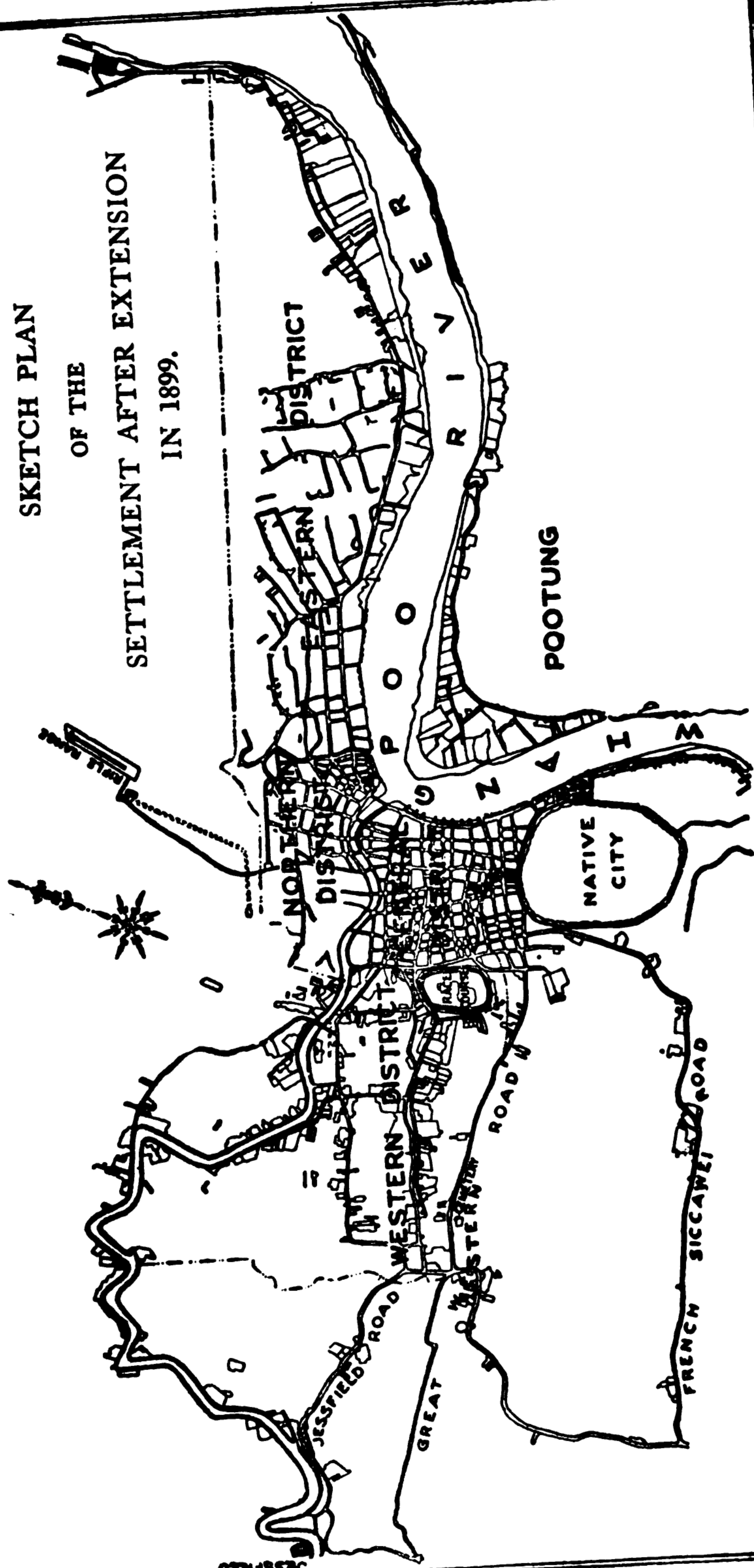
‡Mun. Council to the Shanghai General Chamber of Commerce, June 9th, 1898, *ibid*.

§See *ibid* p. 285.

||March 22nd, 1899.—AUTHOR.

\*\*Notes of the British, American and German Ministers in China to the Tsungli Yamen, March 24th, 1898. Mr. H. O. Bax-Ironside to the Marquis of Salisbury, May 15th, 1899, the Blue Book, China No. 1 (1900).

SKETCH PLAN  
OF THE  
SETTLEMENT AFTER EXTENSION  
IN 1899.



interest to take over the area conceded by the Viceroy, leaving the further questions of Paoshan extension for future settlement.\*

The formal negotiations between the Consuls and the local Taotai † reached a conclusion in the spring of 1899, and on May 9th, Mr. B. Brenan, H. B. M.'s Acting Consul-General forwarded to H. B. M.'s Minister at Peking the agreement concerning the extension of the International Settlement, which took the form of a proclamation of the Taotai. ‡ The proclamation, duly posted throughout the new limits, gave the Council the necessary authority to collect taxes from Chinese residents within the extension area and to exercise municipal control. However, before the proclamation had to come into force and receive the form of a legal act having binding force upon the parties concerned as well as the foreign residents living in the extension, it had to undergo certain formalities prescribed by the Land Regulations. It had to be formally accepted by the ratepayers, and then confirmed and sanctioned by the Consular Body and foreign representatives at Peking and the Chinese Government.§

At a Special Meeting of the Ratepayers on June 29th, 1899, a motion adopting the new boundaries was carried unanimously and forwarded to the Senior Consul, who in July, 1899, notified the Council that the extension agreement and the alteration of the Land Regulations were sanctioned by the Diplomatic Body and the Chinese Government.||

The actual delimitation of the boundaries was carried out by the Public Works Department of the Council in conjunction with the Shanghai Magistrate and the two special Deputies of the Viceroy at Nanking, Messrs. J. C. Ferguson and Yu, and it should be acknowledged that the wishes of the Council were always met in the most friendly manner possible by the representatives of the Chinese

\*Mun. Council's Report, 1899, p. 262.

†Taotai Li, the successor of Taotai Tsai who was removed from his office under pressure of the Diplomatic Body at Peking owing to his irreconcilable attitude in the matter.—AUTHOR.

‡*Taotai Li's Proclamation of the Extension of the International Settlement.*

Whereas on the 5th day of the 8th moon in the 26th year of Tao Kuang (24th September 1846) the former Taotai Kung and the then British Consul Pa agreed in formulating regulations for the first section north of the Yang-king-pang set apart for a Foreign Settlement, for the benefit of merchants and labouring classes and as well for the general prosperity of the place. On the 2nd day of the 11th moon in the 28th year of Tao Kuang (21st November, 1848) the former Taotai Ling and the then British Consul Ho decided to negotiate about the extension of the Settlement, to fix its boundaries, levy a plan and erect boundary stones.

Whereas, later on, it was decided to add a new section to the Hongkew Settlement, and on the 13th day of the 5th moon in the 19th year of Kuang Hsu (26th June 1893) the former Taotai Nieh appointed the District Magistrate of Shanghai Huang as his Deputy, who in conjunction with the Consul-General for the United States and Senior Consul-General fixed the boundaries of the Settlement and put up boundary stones.

Whereas on the 10th day of the 2nd moon in the 14th year of Kuang Hsu the late Taotai Ts'ai received a dispatch from the Senior Consul of that date, namely, Dr. Stuebel, H.I.G.M.'s Consul-General, requesting an extension of the Settlement, and at the same time was notified by His Excellency the Viceroy that the Consul-General for Great Britain and the United States had addressed His Excellency, pointed out that owing to the increase of trade at Shanghai the Settlement had become quite insufficient in area, and that they therefore requested an extension; they in no way desired to encroach upon the powers of the Chinese Authorities before Regulations affecting Chinese should be first approved by the local authorities before being put into effect, while the boundaries of the extension would also be deliberated upon by the local authorities; and whereas Ts'ai Taotai on receipt of this notification from His Excellency communicated with the Senior Consul, H.M.F.M.'s Consul-General Valdez, on this subject of extending the boundaries of the International Settlement, but was unable to bring the matter to a conclusion and received orders to vacate his



authorities.\* Five sketch plans showing the old and new areas, new boundaries and boundary stones were prepared and signed by the Chairman of the Council, the Shanghai Magistrate and Messrs. J. C. Ferguson and Yu. According to these plans the International Settlement after the extension represented the following area :

	Before 1899.	After Extension of 1899.
Area in square miles ... ..	2.75	8.35
Area English acres ... ..	1,768	5,584
Area in Chinese mow (of 7,260 square feet)...10,606		33,503
Greatest length in miles ... ..	3.75	7.50
Greatest breadth in miles ... ..	1.30	2.27
Length of Boundary lines on land in miles...	6.43	11.13
Length of Boundary line adjacent to Soochow Creek or Whangpoo River in miles ...	3.50	9.76

However, in spite of the considerable increase of the Settlement attained as a result of the negotiations of 1896-1899, H. B. M.'s Diplomatic Representatives in China, acting under instructions of the Foreign Office, had not entirely abandoned the idea of a future extension of the Settlement by including in its limits the whole of the Paoshan District. The need for such an extension was apparent. Only this inclusion could ensure the unhampered development of

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office. And whereas on my appointment to this post I had the honour to receive His Excellency's instructions to carry out this extension in conjunction with His Excellency's deputies Mr. Fu (Ferguson) and Yu, it has now been my duty in view of the increase of trade at Shanghai, which has rendered the present area of the Settlement insufficient to negotiate for its extension as an International Settlement; and I have therefore with the assistance of Messrs. Fu (Ferguson) and Yu carried out the negotiation satisfactory with the Consuls of the Powers here represented. It has accordingly been determined that all the Regulations shall operate in this extension, both as originally framed and as subsequently added to, together with the additional Regulation made on the extension of the Hongkew Settlement, and that protection shall thus be afforded to all Chinese houses, properties and graves, together with all creeks and other rights and privileges mentioned in the Regulation, which have been already published by the Municipal Council and exhibited at their office and other public places for the information of all.

Having directed the District Magistrate of Shanghai to join Messrs. Fu (Ferguson) and Yu in co-operating with the President of the Municipal Council in preparing a map and erecting the boundary stones of the International Settlement as it has been determined to extend it; and having communicated with the Consuls of all the Powers here represented; let all men know by these presents that subsequent to the issue of this Proclamation the entire area of the International Settlement shall be within Municipal control, excepting temples founded by Imperial sanction and sites employed officially by the Chinese Government; with these exceptions, the existing Regulations shall operate and must be obeyed.

*Four boundaries of the Extension of the International Settlement.*

East.—From the Yangtszepoo Bridge in the American Settlement to Cou-chai-tsui.

West.—From the Longfei Bridge to the Bubbling Well and from the village by a line drawn to Sinza on the South Bank of the Soochow Creek.

South.—From Pa-hsien Bridge in the French Settlement to the village of Bubbling Well.

North.—From the 5th boundary stone of the Hongkew settlement to the northern boundary of the Shanghai District, i.e. the boundary of Paoshan to Shanghai District, a straight line being drawn on this from Chou-chia-tsui."

§Mr. B. Brennan to Mr. Bax-Ironside, May 9th, 1899.—The Blue Book, China, No. (1900).

||Mr. Pelham Warren, H.B.M.'s Acting Consul-General, to the Mun. Council, July 19th, 1899; Dr. W. Knappe, Consul-General for Germany, July, 21st, 1899; Mr. J. Goodnow, U.S. Consul-General, July 15th, 1899; Senior Consul to the Mun. Council, April 6th, 1899; Mr. Pelham Warren, H.B.M.'s Acting Consul-General, August 11th, 1899; The Marquess of Salisbury to H.B.M.'s Charge d'Affaires at Peking, June 3rd, 1899; Senior Consul to the Mun. Council, December 28th, 1899, H.E. de Bernardo Cologan, Doyen of the Diplomatic Body, to the Senior Consul; December 27th, 1899.

Mun. Council's Report, 1899, pp. 261-270.

\*Mun. Council's Report, 1899, p. 212.



the port of Shanghai, while the opposition on the part of the Chinese authorities was in the eyes of the British Government and other foreign authorities absolutely groundless. Neither the British Government nor the Governments of other Great Powers had any pretension of exercising control over the Railway Station of the Shanghai-Woosung line. It had for them neither political nor strategic importance. That idea was merely an excuse on the part of the Chinese to enable them to oppose the growth of a large modern city not under direct Chinese control.

In his telegram dated May 12th, 1899, the Marquis of Salisbury, H. B. M.'s Secretary of State for Foreign Affairs, laid particular stress upon the fact that H.B.M.'s Minister at Peking "may agree to the proposed arrangement, but should take care that nothing is said which would in any way pledge us to refrain from making demands for further extension in the direction of Paoshan or elsewhere in the future."\*

The interest in the fate of the Settlement displayed by H.B.M.'s Government was quite natural owing to the large capital vested in China by British subjects and the importance of the port of Shanghai for British trade and industry in general, and was entirely corroborated by the actual state of affairs in the Settlement.

Subsequently, in order to dispel the bad impression made upon the foreign authorities by opposition to the Settlement extension and with a view of saving the Paoshan district from being sooner or later absorbed, the Chinese authorities agreed in principle to the lease by foreigners of land outside the Settlement including the Paoshan district. This resulted in many Chinese-owned properties passing into the hands of foreigners and being registered in their names†. All these now foreign-owned properties came, in course of time, automatically under the jurisdiction of the Municipal Council by virtue of their foreign ownership.

Land Registration, 1899.  
Inauguration of  
the Municipal  
Cadastral Office,  
1900.

The procedure and practice for registration of these lands as well as the lands situated within the Settlement limits was utterly unsatisfactory. Under these conditions it was impossible to obtain any accuracy in preparing cadastral plans and schedules, and the registration of property at the several Consulates, without an independent system, had been proved to result in serious abuses and defects. The question had been further and seriously complicated by the operations of the native *shengko* office. In view of the large area of new land brought under Municipal control by the extension of the Settlement, and the consequent necessity for bringing remedial measures to bear on this important question, the Council addressed the Consular Body on the subject and requested that a Municipal Land Office might be established under conditions formally approved by the Body‡.

The proposed measure did not tend to encroach upon the proper responsibilities and duties of the Consulates, and was

\*Blue Book, China No. 1 (1900).

†Taotal to the Senior Consul, March 13th, 1898; May 4th, 1906.—Mun. Council's Report, 1906, p. 402. Taotal to the Waiwupu, from the "Universal Gazette," August 14th, 1906, *ibid*, p. 399.

‡Mun. Council to the Senior Consul, October 10th, 1899.

favourably received by the Consular Body, which appointed a special committee to frame some practical rules for the purpose proposed.\*

In December, 1899, the Committee completed their work and submitted to the Consular Body a report on the registration of title to land at Shanghai,† which was approved by the Consular Body on December 6th, 1900, with the following amendments :

(1) That in order to avoid confusion with the Chinese Land Office and the Consular Land Offices the new institution shall be named : "Municipal Cadastral Office."

(2) That all expense shall be borne by the Council and no additional charge whatever shall be paid by applicants for registration of land beyond the regular Consular Fees.

(3) That a separate cadastral plan and register shall be kept for land within a radius of one mile from and outside the present boundaries of the Settlements, but not including land in the French Concession.‡

Undertaking these measures the Council pursued certain fiscal interests, following the established rule that only those Chinese landowners in the Settlement were entitled to all the advantages of municipal administration who were prepared to accept the same responsibilities as foreign renters, i.e., to pay the equivalent of the tax, upon valuation of land in their possession, assessed from time to time with those foreign-owned lots.§ On March 13th, 1900, the first assessment of the extension area was completed and the following tabulated statement gives an idea of the monetary results of the extension of the Settlement for the Municipal revenue :

Land Assessment,  
1899-1900.

Date.	Assessed Values.		Revenue Derived.			
	English Settlement.	Hongkew Settlement.	Total	Rate	Total	
	Tls.	Tls.	Tls.	per cent.	taxation	Tls.
1869	...	4,707,584	561,242	5,268,826	1/4	13,172
1874	...	6,138,354	1,355,947	7,494,301	3/10	22,843
1876	...	5,443,148	1,493,432	6,936,580	3/10	20,810
1880	...	6,118,265	1,945,325	8,063,590	4/10	32,254
1882	...	10,340,660	3,527,417	13,868,077	4/10	55,472
1882-9	...	10,310,627	3,580,299	13,990,926	4/10	55,964
1890	...	12,397,810	5,110,145	17,507,955	4/10	70,032
1896	...	18,532,573	10,379,735	28,912,308	4/10	115,649
1899	...	23,324,176	14,320,576	37,644,752	5/10	188,224

The operation of the Cadastral Office and the survey of the adjacent districts within the one mile radius according to the Consular Body's desire led to very considerable friction with the Chinese authorities. They regarded this with the greatest apprehension, as in their opinion the completion of the work would mean renewed efforts on the part of foreigners to obtain a further extension of the Settlement.

The first serious opposition was met by the Council in regard to the development of roads giving access to the newly extended area.

\*Mr. Van Walree, Consul for Netherlands, Mr. Browne, H.B.M.'s Consul, and Mr. Charles Mayne, the Municipal Engineer and Surveyor.—Senior Consul to the Mun. Council, November 7th, 1899; Mun. Council to the Senior Consul, November 9th, 1899.—Mun. Council's Report 1899, pp. 274-277.

†Mun. Council to the Senior Consul, September 8th, 1900.—Mun. Council's Report, 1899.

‡Senior Consul to the Mun. Council, December 6th, 1900; Mun. Council to the Senior Consul, December 17th, 1900.—Mun. Council's Report, 1907, p. 165.

§Mun. Council to the Senior Consul, December 16th, 1907.—Mun. Council's Report, 1907, p. 165.

Of course, the making of roads in undeveloped districts inflicted no hardship on the Chinese landowners, but, on the contrary, immediately benefited their properties. Still the Shanghai Taotai displayed great reluctance in issuing a proclamation similar to that of October, 1901, by virtue of which the Council was enabled to deal directly with the local Committeemen and gentry of the Western districts for the purchase and laying out of new roads.\*

Road Extension  
in the Northern  
and Eastern Dis-  
tricts, 1902-1903.

This system of direct arrangement worked well and without friction, resulting in a rapid development of the districts sufficient for future needs and in a considerable advance in the value of property of native owners adjoining the new roads, but it required a proclamation of the Chinese authorities to that effect, as otherwise the Chinese were afraid to deal directly with the Council. In respect to the northern districts the Taotai did not like to cede so easily his rights of representing the Chinese population and lose in such a way further control in the matter. One of his grounds for refusal to issue the much-needed proclamation was that the survey of land and the map of the proposed roads must be made jointly by the Municipal Council and the Chinese Land Office. Upon receiving the Municipal plans he instructed the Land Deputy of the Wai-Chun-Chu to make a special survey. His report was unfavourable to the Council's scheme, pointing out that the proposed filling of the creeks for the new roads would be injurious to the interests of the farmers of the districts, and against the "public sentiment in general" as passing through an old cemetery. Only after lengthy correspondence,† which lasted almost two years, and under pressure brought to bear upon him by the Consular Body, did the Taotai issue in July 1904 the necessary proclamation, whilst the Council, in its turn, was compelled to agree to the exclusion of certain Chinese cemeteries from the scheme and to promise to take due regard to the existing houses and graves. In case of their removal the Council had to pay compensation at the amount fixed by the Chinese Land Deputies and the Municipal Land Commission, confirming at the same time its previous obligation concerning the joint control with the Chinese authorities of all tidal creeks within the Settlement limits.‡

\*Mun. Council to the Senior Consul, January 6th, 1903.

†Mun. Council's Report, 1903, pp. 269-279.

‡*Ibid*, 1904, p. 273.



## CHAPTER IV.

### SETTLEMENT EXTENSION AND ROADS BEYOND SETTLEMENT LIMITS, 1905-1916.—(*Continued*).

The next step of the Municipal Council was in regard to the improvement of sanitary conditions in the newly-acquired area and outside the Settlement, in the new places of foreign residence. According to the contract with the Shanghai Waterworks Co., Ltd., of July 1st, 1905,\* the Shanghai Waterworks Company bound itself to supply water "for ordinary domestic purposes to foreign and Chinese consumers beyond the limits of the Settlement, in districts in which roads or land under the control of the Council shall be opened and mains and pipes laid. This supply of water shall, in the absence of agreement to the contrary, be based on the like rates with the charges to be made for like purposes to foreign and Chinese consumers residing within the Settlement limits. Provided that the Company shall not at any time supply water to any occupier of premises situated beyond the limits for the time being of the Settlement, except during such period as such occupier shall remain bound by agreement with the Council to pay in respect to the said premises rates and taxes not exceeding such Municipal rates and taxes as may from time to time be payable in respect of similar premises situated within the limits for the time being of the Settlement."†

Water Supply  
and Special Rates  
beyond Settle-  
ment Limits,  
1905-1906.

The resolution of the ratepayers at the annual meeting in 1905 determined this rate at five per cent. No difficulty was experienced in the assessment and collection from foreigners; on the other hand, a very general refusal to pay on the part of the Chinese residents received the support of the Paoshan magistrate, the Taotai and other native officials. The opposition sprang, not from any doubt as to its fairness or any unwillingness on the part of those concerned to bear their share of the cost of the public maintenance of the neighbourhood, but was a part of an organized movement in the direction of a distinct native administration bureau, which was established by the Viceroy of Nanking under the name of "Chinese Works Bureau for North Sinza."‡

"I find that under the existing regulations," wrote the Taotai to the Senior Consul on May 4th, 1906, "the Council cannot levy Municipal taxes outside the Settlement, more especially that the first district of Paoshan Hsien is not a place of trade. But owing to the place being in close proximity to Shanghai, the former Taotai applied for and obtained permission from the Viceroy to temporarily allow foreigners to lease land in the Paoshan district, and this was a matter of special consideration or arrangement, not stipulated in the treaties, and therefore the Council has not the right of numbering and taxing the houses in this place. It is admitted that the revenue so collected is used to protect the residents, but the Nanking Viceroy has recently instructed Chu Taotai to come to Shanghai to devise means and make regulations with me to raise the necessary funds for the purpose of

\*Mun. Council's Report, 1905, p.362.

†Shanghai Waterworks Co., Ltd., to the Mun. Council, March 17th, 1905; Water Supply Contract, July 1st, 1905, Art. 4.

‡*Ibid*, 1906, p. 397.



opening the Chinese district of North Sinza to general trade, of constructing macadamised roads, and inaugurating a police force to protect the place. I will shortly discuss the matter with the gentry and merchants and start work in this direction; the first district of the Paoshan Hsien shall be included within this area and placed under the jurisdiction of the Chinese Works Bureau of North Sinza so that the respective boundaries and jurisdictions may be clearly defined."

The contention of the Council that the rate levied must be regarded as "part of the price of water under an agreement between the Waterworks Co. and the Council," but not as a Municipal tax (for anyone living beyond Settlement limits had nothing to pay to the Council unless he wished to enjoy the municipal water supply)\* could not shake the Taotai's firm stand in the matter. In his opinion "a contract between the Council and the Water Company in question was evidently a matter of private and mutual concern and could not be accepted as a ground for collection of taxes outside the Settlement."†

The Taotai referred his protest to the Waiwupu, and, in consequence thereof, H. B. M's Chargé d'Affaires at Peking, informed the local Consul-General, on June 12th, 1906, that "pending enquiry it is essential that the Council should suspend the action complained of, as the Chairman and his colleagues would otherwise be held responsible for any disturbance which might occur."

Notwithstanding the fact that "no sign of disturbance was reported by the Municipal Police and that there was every indication that the Chinese residents in this largely foreign-owned suburb have realised that they cannot continue to enjoy the advantages thus afforded them without contribution in some form towards the costs"‡ the works were suspended and the matter entered the course of diplomatic negotiations. After protracted interchange of notes and joint pressure of the Diplomatic Body the Waiwupu finally instructed the Taotai to come to an arrangement with the Consular Body on the condition that only those houses were to be numbered which were supplied with water from the Shanghai Waterworks Co.

Municipal Survey  
of the land adjoining  
the Settlement,  
1906.

The opposition of the Chinese authorities to all the Council's steps tending to bring into order the complicated question of land tenure in the Settlement and its adjoining districts did not require any particular precedent in order to become manifest.

In 1906, the Council undertook to compile a plan of the land adjoining the Settlement in accordance with the arrangement with the Consular Body at the time of the establishment of the Cadastral Office in 1900. The survey had in view the listing and recording of lots which, since the last extension of the Settlement, had been acquired by foreigners in the Paoshan district, according to permission given to them by the Nanking Viceroy. However, in his letter addressed to the Consular Body on September 22nd, 1906, the Taotai strongly protested against such a survey being carried out in the Paoshan Hsien, stating that "in compliance with the request of the Committee and gentry of the said district Chu Taotai and myself have been appointed, and entrusted with

\**Ibid*, p. 402.

†Taotai to the Senior Consul, from the "Shenpao," June 14th, 1906.—Mun. Council to the Senior Consul, June 14th, 1906, Mun. Council's Report, p. 407.

‡Mun. Council to the Senior Consul, October 23rd 1906, *ibid*, p. 411;

the work of the establishment of a police force, and such like public benefits are being instituted in accordance with the conditions and regulations obtaining in the Southern District (Chinese City).” \*

This new protest of the Taotai disclosed a very serious difference of opinion with regard to the right of the Council to exercise administrative control over roads constructed at its expense in the Paoshan district, but neither the Consular Body nor the Council made any effort to clear the point in dispute. The Council proceeded to complete the map and to do that which, in its opinion, was absolutely necessary for the benefit of the foreign and Chinese communities, without any further regard to the opposition of the Chinese authorities.

We are very far from justifying this arbitrary action of the Council in regard to the encroachment upon the right of the Chinese authorities and, to a certain extent, upon China's sovereign rights, but we cannot overlook also the fact that the Council was compelled to obtain at any cost the improvement of the intolerable sanitary conditions in the adjacent Chinese districts, which threatened to overwhelm the Settlement. The Council sent its own men to keep clean the native thoroughfares leading to the Settlement and insisted on the removal of unburied coffins and bodies, numbers of which were in the immediate neighbourhood of the Settlement.†

In order to appreciate this most frequent cause of dissension between the Municipal Council and the Chinese authorities, it is interesting to cite one of many letters addressed to the Council by the residents, dated July 27th, 1907 ‡ which states, *inter alia*, as follows :

“ Within 300 yards of the Northern end of this bridge (Markham Road Bridge) and on the Western side of the new Chinese Road, there is a group of old graves of the usual conical mound shape and among and around these graves there are over eighty coffins upon the ground without any covering, many of which are mere boxes of boards insufficiently fastened together—one is only a kerosene case ; besides these there are more than a dozen bodies which are wrapped in mats only, unless in the instances where the native dogs have disturbed this arrangement and removed and presumably eaten the body. The odour emanating from this place is most sickening and can be very distinctly perceived in Markham Place, so much so that any pleasure which northerly winds would otherwise bring is entirely destroyed by the nauseating volume with which the wind is loaded.”

All these complaints were of little concern to the Chinese authorities, who either failed to realize the danger of insanitation to the Foreign Community, or did not wish, under various excuses, to take firm measures with a view to ameliorating existing conditions and policing the districts.§ Their chief attention was fixed upon the gradual and irresistible penetration of foreign influence into Chinese territory, which in the eyes of foreigners was quite justified as a logical result of the law of necessity. The

Sanitary problems of 1906-1907.

\*Senior Consul to the Mun. Council, July 25th, 1906, Mun. Council to the Senior Consul, August 3rd, 1906.—*ibid* pp. 408, 409.

†Taotai's protest to the Senior Consul, dated May 30th, 1907 ; Mun. Council to the Senior Consul, July 17th, July 24th, July 29th, 1907.—Mun. Council's Report, 1907 pp. 105-107.

‡Mun. Council to the Senior Consul, April 3rd, 1908.—Mun. Council's Report 1908, p. 228.

§Taotai to the Senior Consul, May 30th, and August 11th, 1907, April 13th, 1908.—Mun. Council's Report, 1907, pp. 105, 107, 1908, p. 229.

foreigners were "confident that continued attempts on the part of the Chinese towards rigid observance of the nominal limits of the Settlement will find no favour with the Consular Body,"\* while the same "rigid observance" of the Paoshan limit was in the eyes of the Chinese authorities tantamount to the defence of China's sovereignty against foreign aggression.†

Chinese scheme for the establishment of a new Chinese Settlement in the Northern and Eastern Districts, 1906-1907.

In order to put an end to all foreign claims for extension, the Chinese officials planned the surrounding of the Settlement by an impenetrable barrier of a new Chinese settlement and of setting against the Western methods of administration a modern native municipality. In April, 1906, the Shanghai Taotai, Hsu Nai-ping, received a despatch from the Viceroy at Nanking regarding the foundation of a new Chinese settlement in the Northern districts.‡

The proposed Chinese Settlement in North Sinza was originally initiated in 1903 by a Cantonese merchant holding official rank, Chung Shao-chong, and other Chinese business men, who, having purchased land in that district, proposed to raise the requisite funds for the construction of bridges and macadamised roads. Subsequent to the departure of Chung Shao-chong for Canton, one named Chou Chin-kwei was elected to succeed him. This Chou died soon afterwards and his place was taken by Taotai Chien Kang-yung. Owing to lack of funds and absolute inefficiency of the initiators, or "owing to frequent changes of personnel, the officials and merchants have become separated in the matter," as stated by the Taotai in his report to the Waiwupu,§ "they made no progress beyond the erection of a bridge."

However, as a result of this movement, a Chinese Works Bureau for North Sinza was established, a police school was opened and Chapei Constabulary created. But neither the first, nor the last satisfied the aspirations of the Chinese authorities respecting their efficiency in checking the gradual penetration of foreign influence into the Northern districts. The inauguration of this establishment only led to further complication in the matter.

Conflicts between the Foreign and Chinese authorities in the period of 1907-1908.

Throughout the whole length of the northern boundary of the Settlement conflicts of police authority had been incessant and the official correspondence following each petty incident had been fruitful, if nothing else, of keeping before the foreign public the danger which the unsatisfactory position with regard to the situation in the adjacent native districts provided.

In the North Soochow, North Chekiang, Boundary and North Szechuen Roads, besides others of less importance, the Chapei Constabulary challenged the authority of the Shanghai Municipal Police, and in each case the Chinese authorities forwarded a protest

\*Mun. Council to the Senior Consul, July 17th, 1907 *ibid*, 1907, p. 106.

†Taotai to the Waiwupu, from the "Universal Gazette," August 14th, 1906.—Mun. Council's Report, 1906, p. 399.

‡Taotai Hsu Nai-ping to the Viceroy, from the "Shenpao," May 5th, 1906, p. 397.

§In 1926 a scheme on similar lines and with the same purpose of surrounding the Settlement was advanced by Marshal Sung Chuan-fang under the name of "Municipality of the Greater Shanghai," of which Dr. V. K. Ting was selected to be first Mayor. There is no doubt that the conditions in 1926 were more favourable than in 1906, but still the experience of one year has shown that even in 1926 a scheme for improvement of the native municipal administration under present political and social conditions in China is very hard to achieve.—AUTHOR.

§The "Universal Gazette," August 14th, 1906.



to the Consular Body charging the Council with grave violation of the Treaties.\*

A leading feature of the relations with the neighbouring native administration in the opinion of the Council† was that it was constantly called upon to act in a spirit of reciprocity, such as might prevail between separate foreign organizations co-operating towards the same general ends. It should not be forgotten that treatment on this footing would have involved fulfilment by the native authorities of promises which they had consistently neglected. In questions arising out of municipal work on the outskirts, the growing tendency to look upon such treatment as a right had been evidenced by the proposed rules as to procedure for arrests,‡ which were, however, rejected by the Consular Body in spite of the fact that they were perfectly logical in theory. Indeed, experience and practice of intercourse with the then Chinese authorities proved that any concession on the part of the foreign administration led to new embarrassments and dangers.§ The Chinese public opinion expressed by the local native press concurred entirely with the views of the foreigners upon the methods of native administration and policing of the adjoining Chinese territories.||

On May 28th, 1908, the relations between the Municipal Council and the local Chinese authorities had become so strained\*\* that the Council formally addressed the Consular Body, asking for support of the Council's proposition "*that all the lands lying between the Settlement and the Railway line be incorporated within Municipal limits and made liable to administration under Land Regulations.*"

Scheme for the Extension of the Settlement, 1908.

The grounds which the Council stated for this course may be briefly summed up as follow :

(1) The expression in Article VI of the Regulations "on the admission by vote of public meeting of any tracts of land into the limits of the Municipal authority" is clear evidence that the situation which has arisen was contemplated when the code was framed, and the conditions which preceded the extension arranged ten years ago were not more difficult than those which at present confront the community.

(2) The nominal boundary of the Settlement on the north is for practical purposes obliterated, merely threading its way through continuous house property, and if the authority of the municipal police were exactly limited by this, the difficulties of detective and patrol work would be almost insuperable.

(3) The plan of "Paoshan" shows how large a proportion of the land in question has been registered under the Regulations, and the fact that it cannot be taxed under similar authority constitutes alike an anomaly and a reasonable cause for complaint on the part of owners of land within the boundary line.

As far as the question affecting the public health of the Settlement was concerned, the Council alluded to its previous despatches cited above and added that in the absence of "any authoritative

\*Taotai to the Senior Consul, July 13th, July 27th, 1908.—Mun. Council's Report, 1908, pp. 226, 227.

†*Ibid*, p. 229.

‡See "Shanghai: Its Mixed Court and Council"—1844-1924, p. 141.

§Mun. Council to the Senior Consul, June 4th, and 10th, July 31st, 1908; Petition of Li-Shang to the Mun. Council, June 8th, 1908; Taotai to the Senior Consul, June 30th, 1908.—Mun. Council. Report, 1908, pp. 230, 231, 232.

||The "Universal Gazette," April 28th, 1908.

\*\*Case of assault by the Chapel Constabulary on Police Constable Sinclair, May 27th, 1908.



means of road construction or supervision of buildings, the district is growing in a manner which, in view of modern requirements for ventilation, fire protection, and general security, cannot be regarded as otherwise than highly unsatisfactory."

The Railway line was selected as the most desirable boundary in view of the absence of any other natural barrier.

In consequence of this letter the Consular Body forwarded to the Viceroy at Nanking on July 3rd, 1908, a despatch requesting him to instruct the Shanghai Taotai, or any other officer, to enter into negotiations on the subject with the Consular Body. In this despatch Mr. D. Siffert, Consul-General for Belgium and Senior Consul, acting on behalf of the Consular Body at Shanghai, reiterated the grounds for the extension of Settlement advanced by the Council in its letter, dated May 28th, 1908.

As it might easily be expected the Viceroy\* refused to enter into discussions of a new Settlement extension on the ground that the area of the extension completed in 1899 amounted "to over 21,500 mow which, in comparison with the English and American Settlements, as originally fixed, amounted to an addition of twice the size. The object of fixing the extension on this exceptionally liberal scale was, that the measure might be an entirely permanent one, and that thereafter there might be no further extension."

Furthermore, the Viceroy found that inclusion in the Settlement of the Paoshan Hsien was the subject of "special dissent" by his predecessor and that there was no record to show that the Consular Body might again raise the question once already settled.

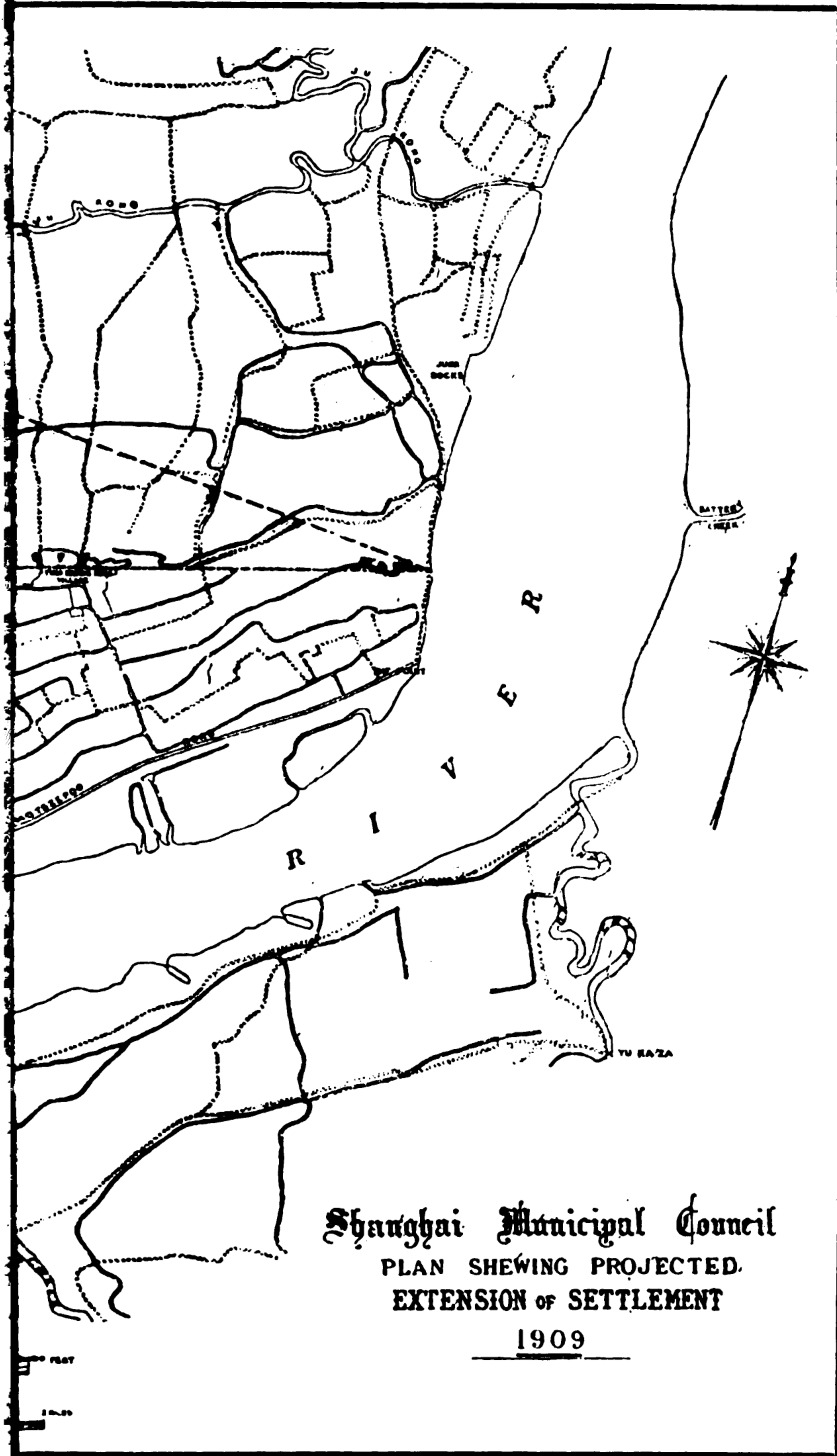
Meanwhile the Council considered the Settlement extension rather as a matter of public necessity than as a concession to be sought from the Chinese Government for which a *quid pro quo* might rightly be demanded.† On March 22nd, 1909, it submitted to the ratepayers' meeting a resolution regarding the inclusion of districts south and west of the Shanghai-Nanking Railway into the Settlement limits, which was unanimously passed. The resolution together with a plan of the new area was forwarded to the Consular Body for transmission to the Ministers at Peking.‡

On August 21st, 1909, the Consular Body addressed the Viceroy for the second time advancing additional grounds for the extension. According to the Consular statement the extension of the area was sought not for the convenience of the foreigners alone, but also for the Chinese residing in the Settlement. Out of 53,000 houses existing in the Settlement only 3,000 were owned by foreigners, while 50,000 were owned by Chinese. Since so many Chinese appreciated the advantages which life in the Settlement afforded them, and occupied a great part of the place originally set apart for the use of foreigners, the Consular Body did not see why a portion of land should be reserved just there where the Settlement was likely to extend. The Consular Body declared also that it could not agree with the Chinese point of view

\*The Viceroy at Nanking to the Senior Consul, July 29th, 1908.—Mun. Council's Report, 1908, p. 234.

†Mun. Council to the Senior Consul, March 29th, 1909.—Mun. Council's Report, 1909, p. 266.

‡Mun. Council to the Senior Consul, April 8th, 1909, *ibid* p. 266.



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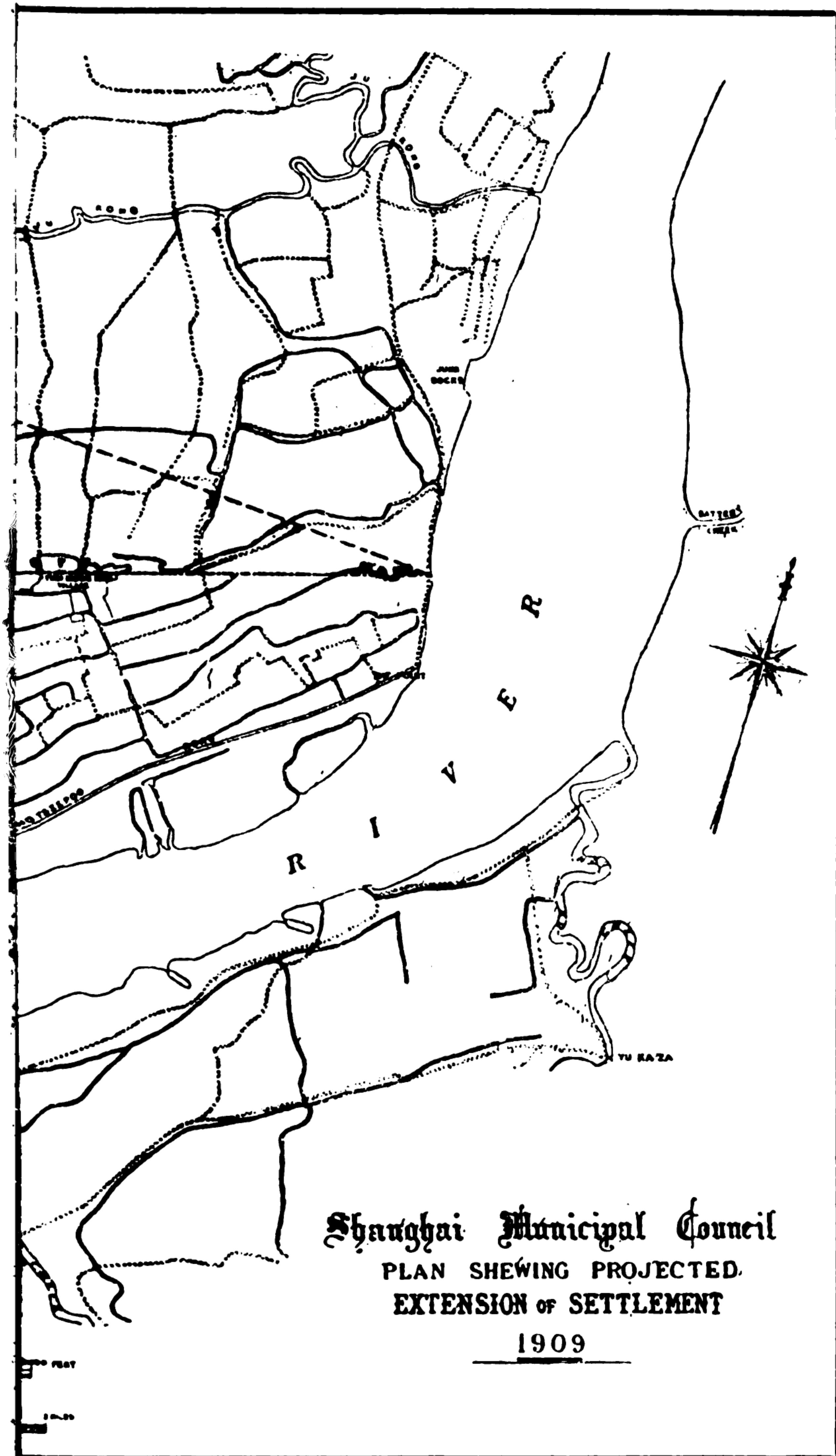
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‡Mun. Council to the Senior Consul, April 8th, 1909, *ibid* p. 266.







that the foreigners had bought land in Paoshan "temporarily only, and by tolerance." The Paoshan district, in the opinion of the Consuls, formed an integral part of the Treaty Port of Shanghai, and "therefore the purchase of land by foreigners there was a mere application of the treaty stipulations."

However, the position of the Viceroy was firm and he declined to discuss the matter with a delegation of the Consular Body, which intended to proceed to Nanking for a personal interview with him. There was no other option left to the Consular Body but to appeal again to the Ministers at Peking.\*

The problem of the Settlement extension aroused, as in the past, great interest amongst the local foreign community and the Powers concerned. The China Association forwarded a despatch to the British Legation and the Foreign Office, strongly urging extension, while the American Association of China, acting upon the request of the Council, addressed the United States Legation in Peking and the State Department at Washington. The latter's reply was very favourable to the plans of the Council. The American Legation at Peking and the Consul-General at Shanghai were instructed to support the request of the Shanghai Municipal Council.† On the other hand the Council, on the request of the Consular Body, submitted a detailed report on the police and health conditions in the Paoshan district,‡ while one hundred registered owners of land under Foreign Title-Deeds in Paoshan raised a protest against the attempt of the native authorities to exercise police function upon foreign-owned property contrary to Art.

\*The Southern Commissioner of Trade to the Senior Consul, August 27th, and November 30th, 1909; Mun. Council to the Senior Consul, October 23rd, 1909; Senior Consul to the Mun. Council, November 12th, and December 16th, 1909, *ibid* p. 268.

†Municipal Council to the American Association of China, November 22nd, 1909; American Association of China to the Mun. Council, December 3rd, and 17th, 1909; April 4th, 1910, Department of State, Washington to the American Association of China, March 2nd, 1900.—Mun. Council's Report, 1910, pp. 260, 261.

‡Senior Consul to Mun. Council, July, 13th, October 27th, 1910; Mun. Council to the Senior Consul, October 12th, 1910, *ibid*, pp. 262-266.

The Captain Superintendent of Police, the Municipal Health Officer and the Municipal Engineer, all reported that there was little difference or improvement to be recorded; but that on the contrary there were indications of the risk which the foreign community incurred from the experimental Chinese administration and from the difficulties which dated from its inauguration. Particularly worthy of note is the remark which the Municipal Health Officer, Dr. Stanley, first made in 1908, and repeated verbatim on this occasion "The need for extension for the purpose of sanitary safety is more urgent than ever, at present these grossly insanitary places, becoming more and more populous, just beyond the boundary, are a standing menace to Public Health."

Towards the latter part of 1910 there was an outbreak of bubonic plague in a neighbourhood closely adjoining the Chapel District. The Community had received nearly two years warning by infected rats before human cases broke out. The Municipal Health Report for the year 1910 contains the following statement:—

"The special danger of plague in this part of the Settlement (the Northern District) was apparent even at the beginning of the year under review, and attributable to the constant introduction of plague-infected rats from the Chapel district, on which it borders, where no measures have been taken against rats by the Chinese authorities."

The measures in question, which are of so much importance in preventing human cases, were opposed by the Chinese authorities in Chapel. In view of this opposition, the Consular Body arranged for instructions to be given by the Taotai to the Chapel Authorities to co-operate with the Health Department in taking preventive measures. The annual chart of the Distribution of Plague for 1911 is eloquent evidence of the serious results of Chinese opposition to the Council's measures against plague rats. It forms at the same time a proof, which appeals directly to one's vision, of the good grounds for the past forebodings of the Consular Body and the Council as to the danger of Chapel from a sanitary standpoint in the absence of proper Municipal control. In his Report for the year 1911, the Health Officer says:—

"The infection has been concentrated in the northern district, especially near the boundary of the settlement where it abuts on the beggar settlement of Chapel,

XXI, XVIII and XII of the Tientsin Treaties, 1885, with Great Britain, America and France.\*

The Chinese Revolution brought to a temporary standstill all the negotiations regarding the Settlement extension. Meanwhile brawls, attempted arrests, illegal seizures and other such conflicts, between the Municipal Police and the new Chinese Republican authorities beyond the northern boundaries were even more frequent in 1912 than in the years preceding. Letters of complaint from the Council and from the Chinese Commissioner for Foreign Affairs, who replaced the old Taotai, have been incessantly transmitted through the Senior Consul, followed each in turn by explanation and counter-complaint.†

Chinese Revolution and the problem of the Settlement Extension—1911, 1912, 1913.

The Chinese Government through the Waichiaopu protested against the exercise of Municipal police control over foreign properties outside the Settlement limit, the drainage of Haskell Road, and the erection of the Police Station in the North Szechuen Road,‡ while the Council found this course the only possible one under existing conditions.§ In a memorandum presented to the Consular Body it gave a brief history of the Settlement extension problem and pointed once more to the fact that the only way to put an end to all friction was to include the Paoshan district in the Settlement boundaries.

Local disturbances, which broke out in July, 1913, and which resulted in the Council having been compelled to send at the request of the Chinese Chapei property owners|| the Municipal police

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which is outside Municipal control and very insanitary. In the eastern district where the rat infection was most intense soon after the discovery of plague-infected rats in December, 1908, the measures adopted have exterminated infection, no plague-infected rats having been found since May 1910; and the Central District also shows a great improvement on last year's figures, while the Western district has never shown any marked infection, and it would appear as if the infected rats found had come over from the Northern District and Chapel. These observations tend to show it is to the introduction of plague-infected rats from the Chapel beggar settlement, where practically no sanitary measures have been taken by the native authorities, that the intensity of the infection of this part of the Settlement is due. This and the subsequent occurrence of human plague cases in Chapel show how dangerous such a neighbourhood on the boundary is to the sanitary well-being of the Settlement."

In 1912 the Health Officer again reported:

"The impression of a sanitary expert is that measures have been attempted without knowing the reason why—being made more with the object of 'look see' than with any intelligent or real desire for sanitary amelioration."

The Engineer also reiterates his former opinion:—

"The public works carried out by the Chinese in this (the North Szechuen Road) district appear to have been more of an obstructive than a constructive nature, and consist merely of the laying out of roads on vexatious lines, in many cases over foreign-owned land. . . . A walk through the respective districts will show the difference between squalor under Chinese and cleanliness and sanitation under foreign administration."

As to police administration, the Captain Superintendent stated, as follows:

"It is clear that the Chapel Constabulary who function on the boundary are placed there mainly for the purpose of watching our police force, and also for the purpose of maintaining what is called China's sovereign rights so far as the actual boundary itself is concerned."

Extract from the respective Reports of the Municipal Health Officer, the Municipal Engineer and the Captain Superintendent of Police, for 1909, 1910, 1911 and 1912. See Mun. Council's Reports for the same years.—AUTHOR.

\*Petition of 100 foreign land owners in Paoshan to the Mun. Council, October 14th, 1910, *ibid* p. 265.

†Mun. Council's Report, 1912, p. 98B.

‡Diplomatic Body to the Senior Consul, April 24th, 1912; Memorandum from the Waichiaopu to the Dean of Diplomatic Body at Peking, April 7th, 1912.

§Mun. Council to the Senior Consul, May 15th, and August 26th, 1921. *ibid*, pp. 99-B, 100-B.

||Chapel Property Owners to the Mun. Council, July 25th, 1913.—Mun. Council's Report, 1913, p. 104-B.



and the volunteers into the northern district to maintain order, gave the Council an opportunity once more to draw the attention of the Consular Body to the urgent necessity of the inclusion of these districts into the Settlement limits. The Council asked the Consular Body to communicate on the subject with the Foreign Ministers at Peking by telegram, but the Consular Body considered "that the present juncture was not opportune to press the matter by telegram to Peking," and declined to comply with the Council's request.\*

The assistance rendered by the Council to the Chinese community outside the Settlement during the critical period in 1913 did not fail to bring a considerable change in the attitude of some of the responsible Chinese residents and officials in respect to the Settlement extension. The inability of the Central Government to guarantee the minimum of safety and to check the interfactional struggle was apparent.

Settlement Extension—1914-1915.

On July 14th, 1914, the Consul-General for France notified the Council "that by virtue of an agreement signed in Shanghai by the Commissioner for Foreign Affairs and himself, ratified at Peking by the Chinese Minister for Foreign Affairs, and by the French Minister, the French and the Chinese Governments have arrived at an understanding with a view to regularizing administrative condition in the locality described as the outside roads of the French Settlement, bounded on the north by the Great Western Road, on the west by the Siccawei Road, on the south by the Siccawei Creek, and on the east, from St. Catherine's Bridge to the Rue Millot, by the centre of the Route de Tchao Tchéou; in order thus to prevent any dispute on the subject of the administration and the policing of the locality in question, which were, in fact, managed by the French Municipality, and are henceforward recognised as pertaining thereto, as of right."

Extension of French Concession, 1914.

The success attained by the French authorities, who were in relation to the neighbouring native districts in an identical position to the Council in regard to the Paoshan district, inspired new hope in the Foreign Community. The disputes concerning the reconstruction of the Sinza Stone Bridge had been settled. The notorious "Chapei Works and Tax Bureau," formerly known as "Chinese Bureau of Works for North of Sinza" and "the Chapei Constabulary and Works Office" had also been abolished.† It appeared that the Council was provided with a suitable opportunity of formally engaging the Consular Body's consideration of a draft agreement comprising the terms upon which an understanding with the Chinese authorities might be reached. The stipulations of the French Convention of April 8th, 1914, served as examples of what this arrangement could be. The draft was the subject of various amendments and modifications and only in March, 1915, the Senior Consul forwarded to the Council the final draft agreement

Convention of July 31st, 1914.

\*Mun. Council to the Senior Consul, July 31st, 1913; Senior Consul to the Mun. Council, August 6th, 1913. *Ibid* p. 107B.

†Commissioner for Foreign Affairs to the Senior Consul, September 21st, 1914; Mun. Council to the Senior Consul, October 20th, and November 26th, 1914; Head Office of Works, Constabulary to the Mun. Council, November 25th, 1914.—Mun. Council's Report, 1914, pp. 103B., 104B.



received by him from the Special Envoy for Foreign Affairs. It ran as follows :

General Agree-  
ment Draft re  
Settlement Ex-  
tension, 1915.

(1) "The Chinese Government to agree to the inclusion in the Shanghai International Settlement under the provisions of the existing Land Regulations of the following areas :—

- (a) The area enclosed between the Shanghai-Nanking Railway on the North, the International Settlement on the East and the Soochow Creek on the South and West, the whole of the Railway line and existing yards to be outside the boundary.
- (b) The area enclosed between the Shanghai-Nanking Railway the Sawjinkiang or Saw-jin Creek and the present boundary of the Settlement to be considered as within the Settlement and to be subject to Municipal Police control.
- (c) The area enclosed between the Soochow Creek on the North, the existing International Settlement on the East, the Siccawei and Hungjao Roads on the South and the projected loopline connecting the Shanghai-Nanking and Shanghai-Hangchow Railway from the Soochow Creek to its intersection with the Hungjao Road on the West.

(2) The Soochow Creek to be under the control of the Municipal police so far as it lies within or forms the boundary of the Settlement. The Whangpoo Conservancy Board shall be responsible for the conservancy of the Creek and a free passage way for Chinese launches and other craft shall be maintained on it. Subject to due notice being given to the Council the Chinese Government to have the right to use those portions of the waterway which lie within or form the boundary of the Settlement for the transport of troops to and from Soochow.

(3) The Chinese Government are of opinion that in theory the Municipal Council should include several Chinese members to deal jointly with matters affecting Chinese in the whole Settlement, but recognising that the existing Land Regulations preclude such inclusion, they accept in the meantime the Advisory Board provided in Article IV as a satisfactory substitute, until Chinese representation on the Council may be feasible.

(4) The Chinese Advisory Board referred to in the preceding Article to consist of two nominees of the Ningpo Guild, two nominees of the Canton Guild and one nominee of the Special Envoy for Foreign Affairs or of the highest local Chinese authority in Shanghai. The nomination of the Members of the Board to be subject to the veto of the Consular Body.

The duties of this Board to be confined to advising at the request of the Municipal Council on all matters affecting the interests of the Chinese residents in the whole Settlement and to making representations to the Council with regard thereto. The members of the Chinese Advisory Board when advising and making representations to the Municipal Council must do so in unison and they will not be allowed to act independently.

(5) If in the future the land-tax levied on Chinese-owned property outside the Settlement should be raised, a corresponding increase shall be made in the land-tax payable on Chinese-owned property inside the Settlement. Property inside the Settlement held by virtue of foreign title-deeds (*tao ki*) shall not be considered as Chinese-owned property for the purposes of the Article.

(6) Chinese houses in the new areas situated on land which has not been registered in any Consulate to be exempt from the payment of Municipal rates for a period of two years, or for such further time as they may remain without Municipal advantages, such as roads, street-lighting, water, sanitation, etc.

(7) The Municipal Council shall levy in the new area no other taxes than the rates on land and houses, and on goods which it is empowered to raise in the existing settlement by Article 9 of the Land Regulations.

(8) Subject to the right of the Special Consular Body to withhold its approval on grounds of public interest, bodies of Chinese troops and Chinese marriages and funerals will be permitted to pass freely through

the Settlement, provided that in order to avoid misunderstanding due notice in each case shall be given to the Municipal Council.

(9) The whole of the village of Yinghsingkong to be excluded from the Settlement and restored to the Chinese authorities.

(10) The Canton cemetery as well as the properties of the Li Hung-chang Memorial and of the Nanyang College shall be exempt from taxation so long as they are used for the purposes for which they are at present employed.

(11) The Municipal Council is to take over the police stations and other public buildings, as well as the waterworks, electric light stations and plant, etc., in the new areas at a price to be agreed upon, or, failing such agreement, the question of the price to be referred to the arbitration of a board consisting of representatives of both parties with the Shanghai Commissioner of the Chinese Maritime Customs to act as umpire.

(12) The Municipal Council to have the option of taking into its service the present employees, police, etc., of the Chapei bureau and in the other new areas or of defraying the cost of their transfer to their homes.

(13) There shall be no obligations whatever to remove graves belonging to Chinese within the new area without the consent of the family which owns them and each family shall be permitted freely to decorate its graves and perform ancestral worship thereat. For sanitary reasons, however, the coffins of Chinese within the limits of the new areas must from the date of ratification of this agreement be properly interred in the ground: they shall not be allowed to remain standing on the surface and the future establishment of coffin storehouses without the consent of the Municipal Council shall be prohibited.

*Note.*—As it is obviously undesirable that the International Settlement at Shanghai should become either a harbour of refuge for notorious Chinese political criminals and agitators or a place where acts of conspiracy and rebellion against the Chinese Government can be contrived and prepared by Chinese, the authorities of the Settlement agree that whenever they receive a notification in writing that such a notorious Chinese political criminal or agitator has taken refuge, or is about to take refuge within the Settlement or that some place within the Settlement is being used by some Chinese for the purposes described above and if satisfactory evidence as to identity and guilt be produced before the Mixed Court the accused will be deported by sea at the expense of the Chinese Government.

*Note regarding the extradition of Chinese political offenders. 1915.*

In the case of a Chinese taking refuge in the Settlement who is accused by a Chinese authority of some crime, serious offence or breach of the laws of a non-political character, committed outside the limits of the Settlement, the authorities of the Settlement agree that such person shall be arrested and they will on proof of his identity to the satisfaction of the Mixed Court order him to be handed over to the Chinese authorities.

All persons deported from the International Settlement under this agreement will be warned that if they attempt to re-enter the Settlement, they will be handed over to the Chinese authorities without further proceedings.

In the case of a Chinese actually resident for not less than six months in the Settlement or who is a *bona fide* Chinese merchant, who is similarly accused by responsible Chinese authorities of some non-political offence or breach of the laws committed outside the limits of the Settlement, such person shall, as heretofore, be handed over to the proper Chinese Authorities in the case of a Chinese subject to their jurisdiction, against whom the Mixed Court may prefer a charge of some offence or breach of the laws committed within the limits of the Settlement."

It was not an easy matter for the Foreign Community to agree to the inclusion into the Settlement Extension Agreement of stipulations which had any bearing on the political neutrality of the Settlement and its traditional right of affording asylum to political offenders, but the need for the extension of the Settlement was so

great that the Ratepayers' Meeting on March 23rd, 1915, unanimously adopted the resolution approving the draft agreement.

A copy of the resolution was forwarded to the Senior Consul, for the information of the Consular Body, and the matter concerning the proposed extension was referred to Peking for final approval of the Chinese Government and the Foreign Ministers.\*

It should be acknowledged that the British Minister exerted all his influence to make the Chinese Central Government ratify the agreement, but the Chinese found ample excuses not to comply with the requests of the Ministers, particularly as some of the Foreign Powers displayed absolute indifference to the question and found it inopportune. Even the promise that the solution of the extension problem would be followed by the rendition of the Mixed Court—a matter in which the Republican authorities were deeply concerned—could not shake their firmness. They did not wish to foster voluntarily the further development of an independent self-governing foreign body on China's ground, whilst Great Britain was unable any more to bring pressure to bear upon the Chinese Government. She was engaged in the war against the Central Powers and her interests were entirely absorbed by war problems. It was hardly in her interest at this juncture to mar her relations with China by pressing the latter to accept her demands.

On August 14th, 1917, China declared war on the Central Powers, and in 1919, we see her appearing as a competent member at the conference table at Versailles and stating that "the existence of the Foreign Concession in China has given rise to the ever-recurring problem of extension. As the population of a Concession grows in size and more room is needed for expansion, demands are made upon the Chinese Government to grant extension of territory. In view of the claim and actual appropriation of broad powers of sovereignty by the foreign Consuls or Municipal Councils on the one hand, and of the opposition of the Chinese residents in the territory asked, on the other hand, it is not unnatural that the Chinese Government should often manifest hesitation to comply with these applications, such delay or refusal, however, is seldom sympathetically viewed, and, more often than not, it is considered a just cause for making acrimonious representations."

And further, after enumerating the several reasons, which made it unnecessary to maintain a status virtually converting the settlements and concessions into *petits états dans état*, to the impairment of China's rights as a territorial sovereign, the Chinese delegation concluded: "In view of the foregoing considerations the Chinese Government entertain a most earnest desire that all the Foreign Concessions and Settlements be returned to China and request the Governments of those Powers which now hold one or more Concessions in China to agree to said restoration."†

Under these circumstances and in the light of political and social events subsequent to 1919, it was hardly possible to press

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\*Mun. Council's Report, 1915, p. 106B.

†Memorandum of the Chinese Delegation submitted to the Peace Conference of Versailles, 1919.—See "Shanghai: Its Mixed Court and Council."—1844-1924, pp. 37-40.



the Chinese Government to make any further concession in a question which appeared in its eyes tantamount to an encroachment upon China's sovereignty and integrity. The idea of seeing the question of a free territorial development of the greatest metropolis in the Far East settled through the inclusion of the northern districts had to be necessarily abandoned. The Foreign Community at Shanghai had to look for new ways of solving the problem of the Settlement extension, if the latter were actually of such vital importance as alleged by the Council and the Consular Body in their communications to the Chinese authorities.



## CHAPTER V.

### SETTLEMENT EXTENSION AND ROADS BEYOND SETTLEMENT LIMITS, 1916-1926.—(Continued)

**Economical  
grounds for ex-  
tension of the  
Settlement, 1908-  
1925.**

The grounds for the extension of the Settlement advanced by the Council in the period of 1896 and 1910, as far as their weight was concerned, did not arouse the slightest doubt in the mind of the Foreign Community. They were all equally and vitally important to its welfare and progress.

In the opinion of the foreigners, the repeated refusals of the Chinese authorities to comply with their request for Settlement extension was due to the latter's deliberate ignorance of the lawful needs of foreigners who, indeed, were tired of living surrounded by decomposing dead bodies with their menace of epidemics, and under the menace of constant conflicts with the Chinese officials.

At the same time it should not be forgotten that many of the grounds advanced by the foreigners for the Settlement extension between 1896 and 1910 appeared to the Chinese to be of very questionable importance.

The Chinese were not interested in the unlimited development of the Settlement by foreigners, and, therefore, it was quite consistent on their part not to attach much importance to what seemed to them to be merely a *menace*.

In effect, the advanced stage of Western science and the splendid organization of the Shanghai Municipal Health Department and Police prevented any serious outbreak of epidemics, a matter of regular and customary occurrence in China, while the death-rate among foreigners and Chinese in the Settlement during thirty years did not exceed the death-rate in such highly cultured and populated cities as London, Paris and New York.\*

The unsatisfactory police conditions and lack of proper protection in the adjacent native districts, advanced by the foreigners as another ground for the Settlement extension, appeared to the Chinese to be even less convincing than the sanitary considerations.

\**Death-Rate from 1895 to 1924 for the International Settlement.\**

Years	Foreign Death Rate	Chinese Death Rate	Years	Foreign Death Rate	Chinese Death Rate
1895 ..	17.1		1910 ..	20.2	17.5
1896 ..	18.2		1911 ..	15.9	13.8
1897 ..	14.5		1912 ..	18.9	19.3
1898 ..	16.2		1913 ..	18.6	15.8
1899 ..	18.9		1914 ..	18.0	16.2
1900 ..	14.3		1915 ..	15.4	13.2
1901 ..	18.3		1916 ..	14.0	13.0
1902 ..	18.1	30.9	1917 ..	20.7	14.9
1903 ..	15.9	21.2	1918 ..	16.5	12.8
1904 ..	12.9	19.2	1919 ..	20.6	14.3
1905 ..	11.2	14.2	1920 ..	15.2	11.2
1906 ..	12.3	12.3	1921 ..	18.2	11.0
1907 ..	19.9	21.9	1922 ..	19.3	11.7
1908 ..	18.2	17.2	1923 ..	17.2	10.3
1909 ..	18.1	17.3	1924 ..	17.1	11.2

\*Compiled from Mun. Council's Reports for the respective years.—AUTHOR.

The death-rate in 1925 for the foreigners was 16.4 a thousand, and for the Chinese 11.2 a thousand. The latter figure can only be taken approximately according to the statement of the Commissioner of Public Health. More than 15 per cent. of deaths among Chinese escape record.—Mun. Council's Report, 1925, p. 107.

The average percentage of criminality in the Settlement under the more humane Western methods of judicial administration was not noticeably lower than in the native districts, while the number of murders, kidnappings and armed robberies, which formed the subject of complaints of respectable merchants, was alarmingly great.\*

As far as the over-population of the Settlement was concerned, the responsibility for the influx of Chinese rested entirely with the foreigners, and the inconveniences caused by it weighed nothing in comparison with the importance to the local Chinese authorities of checking the growth of an independent foreign body threatening to absorb all the adjacent native districts.

It should also be admitted that in these circumstances the persistence of the foreigners in the matter of the extension of the Settlement could easily make Chinese believe that, under the disguise of extension, foreigners were aiming at the seizure of one of the most important political, strategical and commercial points in China.

In effect, something seemed to be behind the whole problem which prevented the parties from arriving at a mutual understanding over a question, which, in reality, tended to benefit both Chinese and foreigners alike. This *something* was the ever present distrust which prevented the Chinese seeing that the extension of the Settlement was not a question of general comfort or aggression on the part of the foreigners, but a question of primary necessity to the progress of the greatest centre of China's trade and industry.

Neither the insanitary condition of the native districts nor the inefficiency of the Chapei Constabulary and the over-population of the Settlement had any real meaning in face of the inflexible economic law, which dictated the absolute necessity for expansion of the Settlement area. The indefinite reference to the growth of Shanghai's industrial life contained in the letter of the Consular Body to the Viceroy at Nanking,† and the question respecting the regular supply of water, electricity, and good roads to places outside the Settlement were of far greater importance as logical grounds for the immediate extension of the Settlement limits than any complaints of the Captain Superintendent of Police

\*The Chinese General Chamber of Commerce representations, January 1916.—Mun. Council's Report, 1916, p. 47A.

Statement re the Number of Murders, Kidnappings and Armed Robberies committed in the International Settlement from 1912 to 1925.\*

Years.	Murder and Manslaughter.	Kidnapping.	Armed Robberies.	Robbery.	Chinese Criminality.
1912	52			86	
1913	54			132	
1914	78	133		167	
1915	60	112		187	5.13 %
1916	30	68	196	282	
1917	46	—	100	207	
1918	35	—	130	152	
1919	37	—	68	184	
1920	38	—	57	129	5.74 %
1921	54	—	94	142	
1922	70	—	47	218	
1923	77	—	109	193	
1924	117	24	204	243	
1925	54	178	349	450	9.81 %

\*Compiled from Mun. Council's Reports for the respective years.—AUTHOR.

For particulars see "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 312-314.

†Mr. D. Siffert, Consul-General for Belgium and Senior Consul, to the Viceroy at Nanking, July 3rd, 1908.

and the Municipal Health Officer concerning conflicts of authority on the Settlement boundary or the contamination of all creeks in the neighbourhood of Shanghai.

The same economic factors, which caused the International Settlement to become the centre of the Chinese-foreign trade and modern industry, moved the Foreign Community to struggle for the extension of the Settlement limits. As a living organism the Settlement could not be placed behind a fence, or confined to a certain limited area. It required space and air for its normal evolution and growth, which was not controlled by any political or administrative factors, but subject solely to the law of supply and demand. The demand was greater than the supply, prices went up, and the Settlement needed extension!

As a matter of fact, it was not difficult to accommodate 13,536 foreigners in 1910, and even 29,947 in 1925, in the territory of the Settlement containing 5,584 acres, particularly as 27,345 were already accommodated within the Settlement boundaries in 1925, and only 2,602 lived outside and required such accommodation.\* But it was hardly possible to omit in the agreement of the Municipal Council and the Shanghai Waterworks Co., Ltd., a provision regarding the obligation and right of the Company to supply water "to foreign and Chinese consumers beyond the limits of the Settlement."†

The initiative of including this provision in the agreement did not belong to the Council, seeking under this pretext to acquire new areas or increase its revenue, as was suspected by the Taotai.‡ It emanated from the Waterworks Co., which had to insure the expansion of its operation in future§ and the stability of its shares and debentures on the market. It was forced on the Council by industrial enterprises situated on the extra-concessional roads, which needed a regular water supply for their normal function, and the Council was bound to accept the terms of the Waterworks if it did not wish to see these enterprises checked through lack of water.

Municipal Electricity Department, 1893-1925.

Furthermore, in 1893, the Council after lengthy consideration finally came to the conclusion that the electricity supply in the Settlement should form a municipal enterprise and voted Tls. 80,000 for the establishment of the first electrical plant in the Settlement.

The original amount vested in the electrical enterprise of the Council was insignificant in comparison even to the amount of money vested in other municipal properties in 1893, but no one conceived at that time that the experimental power plant would attain such tremendous proportions within so comparatively short a time. In fact, in 1908 the capital vested in the enterprise had already reached a sum of Tls. 1,369,000.||

In 1910 and 1911, the increase in demand for electricity caused the Council to ask new credits from the ratepayers enabling the

\*Mun. Council's Report, 1910, p. 25-13, 1925, p. 173.

†Mun. Council's Report, 1905, p. 362.

‡Taotai to the Senior Consul, June, 1906.

§Shanghai Waterworks Co., Ltd., to the Mun. Council, March 17th, 1905.

||Mun. Council's Report 1908, p. 222.



Electricity Department "to keep abreast of the times, by adopting a liberal policy in respect of all improvements in both generating and distributing plants." \*

Electric light was being more and more used by the Chinese. The success of electric power in industry was manifest. One of the largest cotton mills was equipped throughout with electric power. Another mill in Pootung, outside Settlement limits, was also adopting† electricity for power. Thus the opening of the new Riverside Power Station was a matter of the greatest importance for the industrial progress of the port of Shanghai, realized by the foreign community, which on March 21st, 1911, at the Annual Meeting of Ratepayers unanimously adopted the Council's scheme for the floating of a loan amounting to Tls. 665,000 to be spread over two years for the increase of the working capital of the Municipal Electricity Department and the erection of a new and more powerful electricity station.‡

In 1915, at the time of the acceptance of the Chinese terms of the proposed Settlement extension of 1915, the total amount of capital vested in municipal electrical enterprises reached the very considerable sum of Tls. 3,819,000, which formed over 55 per cent. of all municipal liabilities of Shanghai.§ Under these circumstances and in face of a further demand for electricity, within and outside the Settlement, caused by the enormous demand for supplies of all kinds of commodities from the Allies during the Great War, the further development and investment of new capital in the Municipal electric undertaking could not be stopped without badly affecting the very foundation of the whole enterprise.

In 1918 the amount of money invested in the Municipal Electricity Department reached Tls. 5,455,800, while its assets, according to the balance sheet, were valued at Tls. 11,264,733.80 and the contribution of the Electrical Department to the general funds of the Council attained the sum of Tls. 364,000 or over 9.8 per cent. of the total Municipal Revenue.|| The climax was, however, attained in 1925, when the respective figures showed Tls. 21,301,307.73 invested, Tls. 33,772,142.25 assets, and Tls. 900,000 contribution to the general funds or 9.8 per cent. of the total municipal revenue. As a result of this progress the Council was confronted with the necessity of extending to its Electricity Department the same privileges in respect to outside roads as to the Waterworks Co. in 1905. This step on the part of the Council was absolutely inevitable. It guaranteed the normal operation of the largest Municipal enterprise forming the main asset of the Council and covering over 85 per cent. of the total amount of the Municipal indebtedness in 1925.

Analysing further the figures for the last seventeen years, we see that the distribution of electrical units for industrial purposes formed the main output of the electrical energy of the Municipal

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\* Report of the Electrical Engineer, for 1911, Mun. Council's Report, 1911, p. 208.

† *Ibid.*

‡ Proceedings of the Annual Meeting of Ratepayers, March 31st, 1911—Mun. Council's Report, 1911, p. 8 (suppl.).

§ Mun. Council's Report, 1915, pp. 398, 44.C.

|| Mun. Council's Report, 1918, pp. 24-D, 25-D, 43-D



Electricity Department, which, it would not be an exaggeration to say, was, and is, at the present time the chief power supply for the entire industry of the Port of Shanghai. In order to illustrate this statement we give the two following tables of electrical consumption by industrial Shanghai compiled from the Annual Reports of the Municipal Electrical Engineer :

*Comparative statement of motor connections.*

Years.		Horse Power.	Years.		Horse Power.
1908...	...	520.00	1917...	...	23,338.25
1909...	...	788.00	1918...	...	27,719.57
1910...	...	1,070.00	1919...	...	33,062.25
1911...	...	1,775.00	1920...	...	45,304.85
1912...	...	3,029.00	1921...	...	55,211.37
1913...	...	5,263.00	1922...	...	77,697.76
1914...	...	12,181.00	1923...	...	101,331.58
1915...	...	14,547.00	1924...	...	109,793.00
1916...	...	20,340.55	1925...	...	116,650.00

And further :

Years.			Number of Units supplied for industrial purposes.	Percentage to the total output of electrical energy.
1915...	...	...	30,633,455	60.0%
1916...	...	...	42,042,853	67.6%
1917...	...	...	57,182,340	72.8%
1918...	...	...	66,024,895	76.0%
1919...	...	...	79,622,548	77.7%
1920...	...	...	116,839,147	80.8%
1921...	...	...	154,898,657	83.6%
1922...	...	...	198,549,509	84.9%
1923...	...	...	234,419,732	85.7%
1924...	...	...	267,043,809	83.6%
1925...	...	...	255,682,586	86.3%

Out of the number of enterprises receiving electricity from the Municipal Electricity Department about 40 per cent. were factories, mills, filatures and works situated outside the Settlement owing to the high prices of land within settlement limits. Since 1908 these prices were constantly going up\* and this made impossible the acquisition of land for purely industrial purposes within the confines of the Settlement.

Special rate levied on the outside residents and enterprises, its origin and necessity.

There is little need to add that, being entirely dependent on the Municipal supply of power, all these outside enterprises were also bound to the Settlement as the main distributing centre of their fabrics. They needed good communications, telephones, jetties, wharves, water, etc., which, under existing conditions in China, could only be supplied by the foreign administered Settlement. Of course, the burden of construction and maintenance of all these facilities could not be borne solely by the rate-payers inside the Settlement. And if in the earlier period of the construction of extra-concessional roads, the Council was comparatively little concerned in the payment of the so-called special

\*The Average Tael Value of Land per mow based upon Municipal Council assessments for the International Settlement for the period of 1908-1921.

Years.	Tls.	Years.	Tls.	Years.	Tls.
1908 ..	9,850	1914 ..	8,150	1920 ..	10,850
1909 ..	9,850	1915 ..	8,150	1921 ..	10,850
1910 ..	9,850	1916 ..	8,800	1922 ..	12,000
1911 ..	8,150	1918 ..	8,800	1923 ..	12,000
1912 ..	8,150	1919 ..	8,800	1924 ..	16,000

rate by the residents beyond the boundary, since 1912 it had to concentrate its efforts to force contribution of their just proportion of the Municipal taxes. Therefore the Council vigorously protested against the operation of the Chapei Waterworks Company established by the Chinese with a view to competition with the Shanghai Waterworks Company, the operation of which was closely bound with the collection of the special rate.\*

The number of residents and enterprises, both Foreign and Chinese in districts beyond the Settlement boundary, which did not pay land tax, but enjoyed equal business facilities with residents in the Settlement, who paid  $\frac{1}{2}$  per cent. on land values and 12 per cent. on rentals per annum, was very considerable.†

Apart from the fact that the shifting of the whole burden of expenditure upon the shoulders of the residents of the Settlement was not just the Council could not view indifferently the evasion of the payment of the municipal duties on the part of residents of the outside roads from a purely financial point of view. The construction of outside roads, their maintenance and the extension of the Electricity Department required very considerable investment. In order to obtain the necessary funds the Council was compelled to resort to the flotation of Municipal loans on the one hand, and to the increase of the regular municipal revenue on the other. The present analysis of figures starts from 1899, the year of the completion of the last extension of the Settlement, shows that the Council was bound to insist on the inclusion of districts on the borders of boundary roads into the Settlement limits. This was the only constitutional means of making residents and enterprises outside the Settlement contribute their just share to the Municipal expenses. The abnormality that the community should have to rely for due discharge of Municipal duties solely upon arrangements between the Council and private companies, such as the Shanghai Waterworks Company or the Municipal Electricity Department, or upon any makeshift measure, was obvious.

The Municipal liability on loans floated since 1890 reached, on December 31st, 1899, the amount of Tls. 1,038,800, out of which Tls. 210,000 were charged to the accounts of the Electricity Department. The total interest on Municipal Debentures, 1890-1898, less Tls. 11,775.00 charged to the electrical department was Tls. 46,095.00.‡ This sum formed less than 5 per cent. of the total Municipal revenue derived from direct and indirect taxation, from which it had to be mainly defrayed. This proportion, however, changes swiftly with industrial progress and in 1920 reached the amount of 9.4 per cent. against 15.7 per cent., in 1925.

The following table shows the exact proportion of the growth of the Municipal indebtedness for twenty-five years in relation to Municipal revenue.

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\*Memorial of the Viceroy at Nanking to the Chinese Emperor, 1909; the "Sinwanpao," February 5th, 1909.

†Mun. Council's Memorandum on Settlement Extension, Mun. Council's Report, 1912, pp. 101-B, 113-B.

‡Financial Statement, Mun. Council's Report, 1899, pp. 335,357.

Years.	Municipal liability.*	Account of Electricity Dept.	Total interest to be paid on loans.
1900	Tls. 1,027,700.00	Tls. 210,000.00	Tls. 56,749.65
1905	„ 2,161,700.00	„ 680,000.00	„ 118,118.18
1910	„ 3,439,300.00	„ 1,519,000.00	„ 208,165.03
1915	„ 6,868,100.00	„ 3,819,000.00	„ 368,068.32
1920	„ 16,231,034.66	„ 9,886,707.73	„ 844,292.17
1925	„ 42,364,951.57	„ 21,301,307.73	„ 2,834,080.82

Years.	Interest to be charged to the account of Electricity Dept.	Interest to be defrayed from taxation and other sources.	Sum of direct taxation.*	Proportion of interest in regard to the revenue derived from direct taxation.
1900	Tls. 11,775.00	Tls. 44,974.65	Tls. 1,045,177.16	4.2
1905	„ 34,609.19	„ 64,000.65	„ 1,752,049.31	3.6
1910	„ 87,688.97	„ 120,476.00	„ 2,480,188.72	4.8
1915	„ 211,673.89	„ 156,394.43	„ 2,879,286.85	5.4
1920	„ 528,636.59	„ 315,655.58	„ 3,239,677.51	9.4
1925	„ 1,578,255.06	„ 1,225,825.76	„ 7,765,082.37	15.7

It is evident that in these circumstances the Municipal Council had to look for new sources of revenue without resorting to the increase of direct and indirect taxes, since direct taxation had reached a rate of 14 per cent. on the assessed rental of rateable foreign and Chinese houses in the Settlement and 12 per cent. on the assessed rental of rateable foreign and Chinese houses beyond Settlement limits in 1919. Any further increase on this line could easily result either in undesirable friction with the Chinese population, or in a less desirable decrease of population and fall of price of land in the Settlement. Thus the only course left open to the Foreign Community was the extension of the Settlement, as these means only could ensure a regular increase of municipal revenue in proportion to the industrial growth of the Port of Shanghai.

Outside roads as means of indirect extension of the Settlement.

Meanwhile, the failure of the negotiations of 1915-1916, and the subsequent political and social events in China showed clearly that every hope of a direct extension of the Settlement limits had to be abandoned once and for ever, and that the only legitimate means for extension of the Settlement area was a construction of extra-concessional roads, which gave to the Council certain rights outside the Settlement limits.

Consequently since 1916, the Municipal Budget contains a regular item of sums allocated and spent on building of roads outside of the Settlement. These sums increased with every year in proportion to the growth of Municipal liability and development of the Settlement into the greatest industrial centre of China.†

\*This amount comprises, besides land tax, general and special rates, wharfage dues and licence fees, except rent of municipal properties and revenue from public and municipal undertakings.

†The amounts yearly allocated and expended in acquiring land for road extensions during 1916-1926.

Years.	Tls.	Years.	Tls.
1916 .. ..	21,659.38	1921.. ..	26,005.96
1917 .. ..	114,900.24	1922.. ..	70,728.81
1918 .. ..	23,472.69	1923.. ..	215,580.96
1919 .. ..	17,721.57	1924.. ..	316,107.76
1920 .. ..	8,513.91	1925.. ..	753,960.30

Compiled from Mun. Council's Annual Reports for the respective years.—AUTHOR.



The Council based its right of an unlimited construction of roads beyond the Settlement limits on Land Regulation VI of 1898, which stated *inter alia* as follows :

Legal title of the Council to build roads outside the Settlement.

"It shall also be lawful for the Land Renters, and others who may be entitled to vote as hereinafter mentioned, in public meeting assembled, to purchase land leading or being out of the Settlement, or to accept land from foreign or native owners upon terms to be mutually agreed upon between the Council and such foreign and native owners, for the purpose of converting the same into roads or public gardens and places of recreation and amusement, and it shall be lawful for the Council from time to time to apply such portion of the funds raised under Article IX of these Regulations, for the purchase, creation and maintenance of such roads, gardens, etc., as may be necessary and expedient. Provided always that such roads and gardens shall be dedicated to the public use, and for the health, amusement and recreation of all persons residing within the Settlement."

This provision was included into the project of the revised Land Regulations of 1869\* in 1898, after a long struggle of the Council against the Chinese opposition in respect to the right of the Council to construct extra-concessional roads. The Chinese authorities insisted, in the first place, that the new roads were "to the detriment of the existing roads and the cultivation of land," and that the traffic along them disturbed the peace of the Chinese graves, which had often to be removed in order to give space to the roads. Furthermore, in Chinese opinion, the construction of roads by the Council in Chinese territory was an infringement of China's sovereignty and a breach of Treaty regulations :

"Referring to our conversation, during your visit on the 25th instant, on the subject of a horse-road," wrote Taotai Liu to Mr. A. Davenport, H.B.M.'s Acting Consul, October 28th, 1877, "I now forward the following extract from the Commissioner for Foreign Affairs, Shen, in reply to my application :—'The leasing of land provided in the XIth and XIIth Articles of the British, the Xth Article of the French, and the XIIth Article of the American Treaties, is for the purpose of building dwelling houses, constructing churches, erecting godowns, laying out cemeteries, and the like, but there is no plain clause to the effect that lands may be leased for the purpose of making a horse-road. Moreover, there are already at that place horse-roads enough for purposes of pleasure, and as the authorities have already gone out of their way to comply with the wishes of foreigners in this respect, it is quite out of the question that they can be permitted to make another horse-road to the detriment of the existing roads and the cultivation of the land. The Taotai is, therefore, again ordered to urge that the renting be stopped, as the Viceroy cannot believe that the Consuls will, for so small a matter as purposes of pleasure, again force the Chinese authorities into a serious difficulty.'"

The order was given and the *tipaos* refused to seal deeds of sale, without which no transfer of land could be effected, notwithstanding the fact that the country people, owners of the land, had not the slightest objection to the sale of land at a fair and reasonable price.†

\*The projected Municipal Regulations of 1882 contained the following passage under Art. IV. "The Municipal Body of Shanghai shall also have power for the like purpose :—To construct and maintain jetties, bridges, roads, waterways and other public works within the Settlement and upon the property of the Municipal Body wherever situated."—Proposed Municipal Regulations, Shanghai, 1882.

†Taotai Liu to Mr. A. Davenport, H.B.M.'s Acting Consul, October 28th, 1877.

‡Mun. Council to Mr. A. Davenport, H.B.M.'s Acting Consul, July 16th, October 20th, 1877 ; to the Senior Consul, April 8th, 1878.—Mun. Council's Report, 1877, pp. 53-55 ; 1878 p. 50.



The Viceroy and the Taotai were quite justified in doing so from their point of view, for there was no reason for them to be forced "into a serious difficulty" for so small a matter as purposes of "pleasure." The Peking authorities regarded with deep apprehensions the gradual expansion of foreign influence into the adjacent Chinese districts and were very definite in their instructions to the local authorities.

In effect, if the construction of a road itself could not form the subject of particular concern, its maintenance and policing meant a decrease in the Chinese revenue and surrender of Chinese populated territory.

Chinese taxes on roads outside the Settlement Limits, 1868-1871.

The Council so far back as August, 1868, offered to take charge of certain roads, provided that the Chinese Government ground rent upon the land, which they comprised, could be remitted, wholly or in part, and a pledge given by the Chinese authorities that they would protect the roads from injury or encroachment by the natives on the plea of being called upon to bear the expense of repair themselves. When the roads were originally acquired no care appears to have been taken to free the native owners from the obligation of paying the land tax upon the portion of land surrendered from their properties. They consequently either regarded this portion as still belonging to them, and therefore open to encroachment at pleasure, or they took every opportunity of revenging themselves by cutting up the roads and injuring or pilfering the wood of the bridges. The Council attempted in one instance at the recommendation of Mr. G. E. Seward, U. S. Consul-General, and Mr. C. A. Winchester, H. B. M.'s Consul, to put a stop to the nuisance by adjusting some arrears of Chinese taxes, hoping thereby to remove all possible grounds of complaints on the part of the villagers that might be advanced in justification of any interference with public property. But the measure had no effect.

In order to remedy this anomalous condition the Consular Body in January, 1869, appointed a Committee to procure from the Taotai the remission of taxes on lands taken up for outside roads, as well as aid in maintaining them in repair and free from encroachment, but the latter declared that this was beyond his power.\* In 1870, the matter was referred to the Diplomatic Body at Peking and the Consular Body made a joint representation requesting that the Imperial Government be urged to order the Viceroy at Nanking to issue a decree freeing all land set aside or purchased for public use outside the Settlement from any obligation to pay Government land rent or tax.†

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\*W. H. Medhurst's, H. B. M.'s Consul, Memorandum on Roads outside of Shanghai Settlement, November, 1871.—Mun. Council's Report, 1871, pp. 25-27.

†The roads in respect to which this measure was indispensable were:—

(1). *Bubbling Well Road* from the Horse Bazaar to the Well. This was partly foreign and partly native-owned. The larger proportion, however, was foreign owned. No provision had ever been made for payment of the tax on the part surrendered by natives. The tax on that by foreigners was presumably paid. The Council held a title deed for the entire road, and Mr. J. Hogg held a title deed for the portion from the Horse Bazaar to the Grand Stand. The Council had always refused to pay land tax on this title deed.

(2). *The Sicaurei Road* from *Bubbling Well* to *Sicaurei Road Bridge*. This was occupied without purchase of land from the native proprietors; seven-eighths of this road was native-owned. No title deeds were held for the road itself. The land tax was paid by the natives.

Of course, all difficulties under pressure of the Foreign Ministers were removed,\* but still the local Chinese authorities were not easily prepared to part with the control over the extra concessional roads. At every opportunity they raised objection to the Council's efforts of taking over the roads notwithstanding the fact that the control meant responsibility for expenses of repair and maintenance.†

Policing of roads beyond the Settlement limits, 1877-1903.

Meanwhile not only the inability of the Chinese authorities to maintain the roads in order but also their inefficiency in rendering proper protection to people residing adjacent thereto were obvious. As for the rest, the Chinese were in general very little concerned in claiming any jurisdiction over the foreigners even in the form of policing the districts. The provisions of the fundamental treaties were fresh in their memory, while the difficulties connected with the intercourse were very considerable with such "exacting and troublesome people" as foreigners. The Chinese admitted that, in fact, it was "out of the power of the Chinese authorities to exercise discrimination and authority" over a foreigner speaking a language which the Chinese did not understand.‡

In August, 1884, on account of the disturbed state of the country consequent upon the unsettled political relations between France and China, the Council decided to afford some protection to the residents outside of the Settlement, and for this purpose

(3). *The French Road from Siccawei Bridge to Ningpo Joss House.* This had always been controlled by the French Council.

(4). *The Sinza Road from Gasworks Bridge to junction with Cross Road to Miller's Bungalow and thence on to Bubbling Well.*

(5). *Road from Sinza junction to Markham's Farm* skirting Soochow Creek to Jessfield and Fahwa connecting with Siccawei Road near the Hermitage. This was a military road, acquired by the Chinese authorities, or with their consent during rebel times. No title deeds existed. Much of it between Jessfield and Siccawei had been re-appropriated by natives.

(6). *Jessfield to Bubbling Well.* A private road, made, it was assumed, with consent of the villagers. No title deeds existed. It was contemplated to take this over for public use.

(7). *Woosung Road.* The mode of acquirement was doubtful. There were persons who said the land was bought. The villagers declared that they were not all satisfied and they assigned this as a cause for their perpetual inroads. Tls. 8,000 was said to have been expended in construction of road and bridges. The road was nearly extinct. Nearly all bridges being pulled to pieces.

(8). *Yangtzepoo Road.* Land acquired under convention entered into between Taotai and Consul-General Seward. Land tax was not provided for and Chinese were still under obligation to pay it.

The approximate superficial areas of the roads above detailed may be estimated as follows:—

	Mow	f.	l.	h.
1. Bubbling Well Road .. .. .	126	5	5	2
2. Bubbling Well Road to Siccawei .. .. .	134	0	0	0
3. French Road .. .. .	260	0	0	0
4. Sinza Road .. .. .	60	0	0	0
5. Sinza Road to Markham's farm .. .. .	25	0	0	0
6. Bubbling Well to Jessfield and thence to Fahwah	250	0	0	0
7. Woosung Road .. .. .	285	5	1	5
8. Yangtzepoo Road—that portion within Municipal limits say .. .. .	30	0	0	0
Mow	1,171	0	6	7

The estimated cost to the Imperial Government of conceding the proposed remission of taxes, reckoning at the rate of 1,500 cash per mow (an average far higher than that paid on neighbouring lands by the Chinese) was about cash 1,750,000.—*ibid.* p. 27.

\*Senior Consul to the Mun. Council, June 6th, 1878.—Mun. Council's Report, 1878, p. 51.

†Taotai Kung to the Mun. Council, November 28th, 1887.—Mun. Council's Report, 1887, p. 179.

‡Chinese Imperial Commissioner to the Consular Body, December 1st, 1863.—"Shanghai: Its Mixed Court and Council," 1842-1924, p. 48.

engaged 16 Sikh constables to police the Bubbling Well and other roads; this measure did not meet any opposition on the part of the Chinese.\* No opposition was rendered when, towards the end of the year, the country having become quieter, it was decided to continue the policing of the Bubbling Well Road and adjacent roads, "as circumstances may render necessary, on the understanding that at least Tls. 1,800 per annum of the cost of maintaining such a force shall be provided by private subscription."†

Thus the first efforts of the Municipal policing of the outside roads were dependent on voluntary contributions of residents, who, it should be admitted, were very slow in meeting the appeal of the Council.‡ In 1903, the Council was compelled to address the residents outside Settlement limits by circular explaining the situation and stating that—

"Prior to the extension of the Settlement in 1899, owing to the then restricted residential area, many persons were practically compelled to live beyond Settlement limits. The Ratepayers, recognising the necessity, sanctioned arrangements made and expenditures incurred for the benefit of residents on outside roads; and residents contributed considerable sums in recognition of benefits received. At the present date, however, it may fairly be said that where residents are established beyond Settlement limits one of the principal objects aimed at is exemption from Municipal Taxation."

Taxation of the foreign residents beyond the Settlement Limits.

Recognising the necessity of maintaining certain roads beyond Settlement limits, as riding and driving thoroughfares for the convenience of the taxpaying community, the Council, however, refused definitely to bear further expenditure in cases where this expenditure was incurred for the immediate advantage of private individuals only. The Council was of the opinion that the most equitable solution of this question was that residents beyond Settlement limits should contribute to Municipal funds on the basis of the ordinary house assessment rate, i.e., 10 per cent. on actual or assessed house rentals; in return for such payment the Council was prepared to afford such assistance, facilities, and public rights as were enjoyed by ratepayers.

From the varied and qualified character of many of the replies received (and it is worthy of note that a large proportion of the circulars remained without reply), it became evident that no procedure of general and universal application could be devised. §The policing of the roads in question, however, was so important to the general welfare of the foreign community in general that after slight hesitation the Council decided to retain the old system of voluntary contributions, continue the policing of roads ||and make good the deficiency, if any, out of the Municipal funds.

Foreign Opposition to the Municipal policing of outside roads. 1905.

The right of the Council to police the roads and foreign property beyond the Settlement was challenged for the first time in 1905, in connection with the case of the Spanish Crown *vs.* F. Gordon in the Spanish Consular Court. The judgment in this

\*Mun. Council's Report, 1885, p. 61.

†Resolution of the Annual Meeting of Ratepayers, 1885.

‡Mun. Council's Reports, 1886, p. 53; 1887, p. 45; 1888, p. 44; 1889, p. 64; 1890, p. 56; 1891, p. 51, 1892, p. 67; 1893, p. 68; 1894, p. 56; 1895, p. 64; 1902, p. 170; 1903, p. 148.

§Mun. Council's Report, 1903, p. 180.

||Mun. Council's Circular, August 1st, 1903; *ibid.*



case contained the following passage :—" This Consulate does not recognise any jurisdiction of S.M. Police outside the limits of the Settlement." It was clear from the very beginning that in using the word " jurisdiction " the Spanish Consul was not accurately informed as to the precise meaning of the term, since the Municipal Police had never claimed or attempted to exercise any jurisdiction whatever. However, in order to clear this point the Council addressed a letter to the Senior Consul, dated August 21st, 1905, \*stating " that for very many years there has been continuous Police surveillance of outside districts, exercised under the Land Regulations, with the full approval of the Consular authorities, and at the request of the large number of residents living in these districts." The Council requested the Senior Consul to lay the matter before the Consular Body with a view to the prevention of misunderstanding in future :-- " Since the work of the Police on the Siccawei, Jessfield, North Szechuen and other roads, was paid for by the residents themselves, and if it was found to be without result, when tested in the local Consular Courts a position of considerable difficulty would be created."

The Consular Body stated in reply as follows :

(1) In all judicial matters the Police are only acting as delegates of the Consul concerned, and their powers go only as far as instructions issued by the Consul or the Consular Body allow them to go. *There is no difference between the International Settlement and the territory outside the limits of the same.*

(2) *All Police measures having for their object to ensure peace and good order are valid in the International Settlement as well as on the roads constructed by the Municipal Council outside the Settlement, provided they are approved by the Consular Body.*†

The principles laid down by the Consular Body in this dispatch were perfectly true in regard to the foreigners and their property outside the Settlement limits. They complied strictly with the exact wording of Art. XXI, XVIII and XII of the Tientsin Treaties, 1858, between China and Great Britain, America and France, and did not arouse any protest on the part of the Chinese authorities in regard to the roads situated in the western district. But the Chinese definitely refused to recognize the right of the Municipal Council to police native properties and arrest persons of Chinese nationality on the roads beyond Settlement limits in the Northern district. They refused to recognize it even though the Council had been urged " to confer the benefits of adequate policing and municipal control to residents of outside roads, not only by Foreigners but also by the Chinese."‡

Neither this nor the Council's contention that the right of the ownership and construction of roads (Land Regulation VI, 1898) by a foreign public body enjoying extraterritorial rights exempt these roads from regular native jurisdiction were able to shake the firmness of the opposition on the part of the Chinese.§ They

Confirmation of the right of the Council to exercise police jurisdiction in respect to foreigners residing on extra-concessional roads, 1905.

Chinese opposition to policing of outside roads, 1906.

\*Mun. Council's Report, 1905, p. 110.

†Dr. Knappe, Consul-General for Germany and Senior Consul, to the Mun. Council, September 7th, 1905, *ibid* p. 111.

‡Petition to the Mun. Council, March 1st, 1906, signed by Luk Hop & Co., Owners of J. Lok Lo Yee Kun & Co., The Cantonese Hoa Tak Chong-Land Investment Syndicate and Tom Cho-hing.—" N.-C. H.," April 27th, 1906.

§Mun. Council to the Senior Consul, June 14th, 1907.—Mun. Council's Report, 1907, p. 29.



denied definitely that "at the time the Settlement was last extended (1899), the Chinese Authorities gave the right to police, sanitate, and make roads in this portion of the Paoshan district, and undertook to issue title deeds for foreign-owned lots therein,"\* stating that anything that was granted by Taotai Yuan at the time of this extension was "a special concession not to be quoted as a precedent."†

Conflict of au-  
thority, 1907-  
1911.

In 1907, in connexion with the prosecution of two *likin* runners for operating within the limits of the Settlement, the Mixed Court Magistrate had raised a counter prosecution against one of the Municipal detectives for making an arrest in the Jessfield Road. The North Szechuen Road, Jessfield Road and Li Hongkew districts (roads and districts beyond the Settlement limits) had been controlled by the Municipal Police since the growth of the Settlement. At the same time the Taotai forwarded to the Consular Body a set of four rules concerning the procedure of arrests of natives beyond the Settlement boundaries, alleging that the Chinese police had the right of functioning on the outside roads constructed and owned by the Council according to Land Regulation VI.‡

The Consular Body refused to agree with the proposed regulations stating in reply that "the Settlement authorities do not object to police from other jurisdictions accompanying the Municipal police in the search for offenders within the Settlement and the same procedure should apply outside the Settlement as it has been done for the last thirty or forty years."§

However, in spite of its definite declaration the Consular Body proceeded further to discuss the matter with the Chinese authorities, who in course of the following correspondence, extended their contention and referring to Art. IX of the British Treaty of Tientsin claimed the right to exercise police jurisdiction even over the foreign members of the Municipal Police. This, of course, was a definite challenge of the entire Council's theory based on the same article and Art. XII of the British, Art. X of the French, and Art. XII of the American Treaties of Tientsin.|| The indecision displayed by the Consular Body in the matter alarmed the Council:

"The Council regards it as a matter for the deepest regret," stated the Council in its letter to the Senior Consul, July 5th, 1907, "that the substituted regulations were forwarded to the Taotai without consultation with the Council in the first place; before making any comment upon the point raised, I am desired by the unanimous resolution of my colleagues to record the Council's respectful, but, at the same time most strong protest, at the course of action which has been followed.

The clear definition of the jurisdiction of the Mixed Court, and with it of the duties of the police as the only recognized executive in the Settlement, has repeatedly been the subject of correspondence with yourself during the past two years, and so lately as on March 21st last the letter of my predecessor in office contained the request that steps be

\*Mun. Council to the Senior Consul, October 23rd, 1906.—Mun. Council's Report, 1906, p. 411.

†Taotai to the Senior Consul, September 22nd, 1906, *ibid*, p. 410.

‡Taotai to the Senior Consul, May 30th, 1907.—For particulars see "Shanghai: Its Mixed Court and Council," 1842-1924, p. 141.

§Senior Consul to the Taotai, June 12th, 1907.—Mun. Council's Report, 1907, p. 30.

||Taotai to Senior Consul, August, 19th, 1907, *ibid*. British Treaty of Tientsin, Art. IX contains *inter alia* the following passage:

"If he (British subject) be without a passport or if he commits any offence against the law, he shall be handed over to the nearest Consul for punishment."

taken to terminate the present undefined and unsatisfactory state of affairs. It is therefore with no small degree of surprise that the Council finds occasion being taken to add to the number of subsidiary arrangements under which the Court is managed, and that the subject of these latest rules is the transitionary and difficult one of the control of the roads leading beyond the official Settlement boundary.

The Consular Body will recall the fact that when, in the early part of this year, the Council was notified of the establishment by the Taotai of a Chinese police force for duty in the outskirts, the opportunity was taken to point out that, in roads of the character of the North Szechuen Road extension, the Municipal Police must in the interests of the foreign residents concerned continue to patrol, to investigate crime, and to make arrests when necessary."

In their negotiations with the Consular Body the Chinese authorities laid particular stress on the fact that "in localities outside the Settlement all matters affecting law uniformly revert to the control of the Chinese police bureau, and the Mixed Court and the Municipal Council cannot encroach and interfere. If, therefore, there is land owned by foreigners, it enjoys, together with the native population, the advantages which accrue from the protection of the Chinese police bureau within the powers of which it is situated, and must therefore, in like manner acknowledge the police regulations of the place."\*

It should be admitted that the position of the Chinese authorities headed by the Taotai was theoretically very strong, and it is to be regretted that the issue was again permitted to remain without being thoroughly ventilated. The Consular Body informed the Council that it decided to reject all the Chinese proposals *re* arrests outside Settlement limits, and that if the Taotai tried to put them into force, "the responsibility of any trouble that may be the consequence of such an action will rest with him."†

In 1908, the Taotai protested against the filling of the Shanghai-Paoshan boundary creek and construction thereon of a road‡ although this was undertaken "merely for purposes of sanitation and in the public interest," and no boundary stones were removed.§ The protest was followed by some action on the part of the Chapei constabulary, which, apparently had in view the idea of strengthening its weight in the eyes of the foreigners.

On May 31st, 1908, a native official attempted to drive along the road in course of construction and when stopped assaulted several of the workmen and was assaulted in return. Two labourers were arrested by the Chapei constabulary and received each 1,000 blows, while their foreman, arrested five days later, was dragged to the adjoining yamen and there beaten to death.|| Of course, all this was denied by the Chinese\*\* and the Council was unable to obtain any redress, but this, in our opinion, was not so important in comparison with the significance of the incident itself—after fruitless protests the Chinese authorities for the

\*Acting Taotai to the Senior Consul, November 5th, 1907, *ibid.*, p. 34.

†Senior Consul to the Mun. Council, November 19th, 1907, *ibid.*

‡Taotai to the Senior Consul, July, 13th, 27th, 1908.—Mun. Council's Report, 1908, p. 227.

§Senior Consul to the Taotai, April 11th, 1908; Mun. Council to the Senior Consul, July 31st, 1908, *ibid.*, p. 228.

||Mun. Council to the Senior Consul, June 10th, 1908, Petition of Li Shang to the Council, June 8th, 1908, *ibid.*, p. 231.

\*\*Taotai to the Senior Consul, June 30th, 1908, *ibid.*, p. 232.

first time had resorted to force and attempted to establish their authority on a municipal road beyond the Settlement limits.

Outside roads in the Western district, 1912.

As far as the Western district was concerned, the Chinese authorities as before mentioned, displayed more reasonable consideration and the execution of the scheme for the extension of extra-concessional roads in this district proceeded without particular difficulty\* while every opportunity was used to stop the growth of the Settlement and its industry in the direction of the northern district.†

However, in 1915 the Chinese authorities made a determined attempt also to establish their police control over the roads beyond the limits in the western district. The Consular Body and the Council assumed a very firm stand‡ in the matter and the Special Envoy for Foreign Affairs was compelled to give assurance that the military and police are instructed "to be careful for the future."§

It is to be regretted that the Consular Body again lost the opportunity to clarify once and for ever the entangled issue of the right of the Municipal police to function on roads beyond the limits of the Settlement. Although the Consular Body was expressly requested by the Council to obtain recognition of the fact that "a trespass has been committed of a kind which has been somewhat

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\*Mun. Council's Report, 1912, p. 36-B.

†In October 1911, the newly formed "Chapel Water and Electricity Works," a Chinese Company patronized by the Chinese authorities, shareholders of this enterprise, made an application to the Council for permission to lay mains across the North Szechuen Road. Inasmuch as the Council had granted the monopoly to the Shanghai Waterworks Co., Ltd., for the supply of water throughout all "roads and other lands under the control of the Council within and without the Settlement," as an indispensable condition of its successful operation and progress, the Council was unable to comply with the request. In refusing this request the Council was also moved by another important fact, viz.: that the taxation of the houses beyond the limits of the Settlement was effected by means of the terms of the Waterworks concession agreement, and the Council expected that the Consular Body would uphold its position. The Chapel Water and Electricity Works Co. filed a suit against the Council in the Court of Foreign Consuls claiming the right to lay a water main across the North Szechuen Road. The Court of Consuls consisting of Messrs. D. Siffert, Consul General for Belgium, P. von Buri, Consul-General for Germany, and E. D. Fraser, Consul-General for Great Britain, found that "of nearly all of the North Szechuen Road the Defendant Council was the undoubted owner" but that the Defendant Council failed to produce any proof whatever either by title deed or sufferance amounting to prescription in regard to the right not only of occupation of the surface of the strip of land forming the crossing but of absolute ownership extending to the subsoil. Neither party having satisfied the Court of absolute ownership or of the right to exercise the same over the crossing of the two roads, the dispute must be decided on the broad grounds of equity. "In the opinion of the Court, the furtherance of monopoly is directly contrary to the provisions of the treaties between China and the Powers and could not be legally countenanced by this Court nor should be by the Chinese authorities. On these grounds the judgment was entered against the Council, which was bound by the Court to issue the necessary permit, while the Chapel Water and Electricity Works Co. was ordered to enter into an undertaking with the Council not to prevent, hinder or interfere with in any way except by legitimate competition the operation of the Shanghai Waterworks Co. to the east of the North Szechuen Road."

Meanwhile, as it appeared from a memorial to the Throne by the Viceroy presented about the end of 1909, which received the Imperial Rescript: "Let the Boards concerned discuss and memorialise,"—the Chapel Water and Electricity Works Co. was expressly established to undermine the Municipal revenue from the taxation in connection with water supply, and the entire elimination of the Shanghai Waterworks Co. from districts beyond the Settlement boundary.—Mun. Council to the Senior Consul, October 23rd, 1912; Memorandum on Settlement Extension,—Mun. Council's Report, 1912, p.p. 72-B, 74-B, 1909-B.

Memorandum of the Waichiaopu to the Dean of the Diplomatic Body, April 7th, 1912, concerning the erection of a police station on the North Szechuen Road, *ibid*, p. 99-B.

‡On December 10th, 1915, Mr. Springfield, Assistant Superintendent of Police, reported that when he was proceeding in his motor car along the Hungjao Road he was suddenly stopped and surrounded by Chinese soldiers, who released him only after the arrival of their officer.

§Chow Chin-piao, Special Envoy for Foreign Affairs to the Senior Consul, December 31st, 1915.



too frequent in the past."\* This recognition was absolutely essential in view of the Council's being compelled by the needs of the growing industry and population to start in the near future an extensive development of outside roads.

With the advent of a Republican Government, it was anticipated that the former policy of obstruction of the Imperial Chinese officials would not only cease, but the local Republican authorities would strive to emulate the progressive attitude of the Council in respect of the development of the Shanghai district. However, as already stated in the preceding chapters, the attitude of the latter was that of greater intolerance and ignorance as to the implacable economical law moving the Settlement towards the native outskirts.

Municipal scheme  
of development  
of outside roads,  
1918.

On January 30th, 1918, the Commissioner for Foreign Affairs addressed a letter to the Consular Body protesting against the right of the Council to construct roads outside the Settlement in accordance with Land Regulation VI. This letter opened a new era in the relations of the Chinese authorities to the privileges and rights enjoyed hitherto by the Community.

The facts set out in the Commissioner's protest were briefly as follows :

In January, 1918, the Shanghai City Magistrate reported to the Commissioner that several *tipaos* and a notable reported to him that the Council suddenly erected M.C.R. (Municipal Council's Road) stones on the extension of Great Western Road beyond the official boundary. The *tipaos* stated that they could not agree to foreigners making roads beyond the limits of the Settlement, "thus involving China's sovereign right," and they decided not to accept compensation for land required for roads—"should anyone be found privately accepting compensation for land for municipal roads he will be reported and will be dealt with by the officials."

The Magistrate stated further that the district in which the road was planned was purely native territory and there was no reason why foreigners should erect boundary stones there at their own discretion. The Council had already made several roads in that vicinity, viz, Siccawei, Edinburgh, Hungjao, Warren, Yuyuen and Brenan Roads. The Edinburgh Road had been paved, electric poles erected, the road policed by Municipal Police. The Magistrate was of the opinion that the newly projected track was "a strategic point and foreigners should not be permitted to make roads through that district." He wrote to the Chief of the Chinese Constabulary for Woosung and Shanghai to give instructions to the local constabulary to make enquiries and to stop any foreigners who were found engaged in road construction work.

On the other hand the *tipaos* of various districts were summoned and directed to give instructions to the land owners "not to receive compensation for the surrender of their lands, and required to give bonds for the faithful performance of their duties in this matter."†

The Commissioner asked the Consular Body to instruct the Council to stop the work accordingly, and to remove the house

\*Mun. Council to the Senior Consul, January 19th, 1916.—Mun. Council's Report, 1916, p. 46-A.

†Commissioner for Foreign Affairs to the Senior Consul, January 30th, 1918,—Mun. Council's Report, 1918, p. 28-C.



numbers where these had already been placed, and to refrain in future from numbering houses beyond Settlement limits.\*

The facts stated in the Commissioner's protest point to this—acting under express authority of the Land Regulations sanctioned by both the Chinese Supreme Government and the Foreign Ministers at Peking in 1898, the Council undertook the extension of the Great Western Road, the completion of which would unquestionably have been of mutual advantage to the residents of the Settlement and to the country people residing west of the Edinburgh Road, by the majority of whom this fact was fully appreciated. On the other hand, the City Magistrate undertook certain steps of intimidating the Chinese landowners concerned and endeavoured to obstruct the development and progress not only of the Settlement but of the outside and contiguous districts. The numbering of houses by the Council was made for the sake of convenience and uniformity and not with any hidden thought of establishing municipal authority over these properties.†

The correctness of this contention was directly evidenced by the fact that notwithstanding the disturbed state of political and social affairs in the Settlement during 1919-1920, the construction of roads in general proceeded without causing particular difficulties to the Council, and the Chinese landowners readily accepted compensation.‡

This does not mean, of course, that the Chinese Republican authorities gave up their plan to upset the growth of the Settlement. In 1921, when the Council, complying with the request of the Chinese landowners, attempted to construct a road in extension of the Fusan Road, the Chinese police interfered and compelled the municipal workmen to withdraw.§

The position became very acute and the Chinese who had requested the Council to construct the roads, and had offered to surrender the land and to contribute to the cost of the road, were compelled to withdraw their offers and request "in accordance with the public sentiment".||

The reasons advanced this time by the Chinese authorities varied very slightly from those advanced on previous occasions, except for may be the allusion to "public sentiments," and the reference to the Land Regulation VI, which in the opinion of the Commissioner for Foreign Affairs provided the Council with the right of constructing roads only "in the interest of the residents of the Settlement," and which, in his opinion, was not the case in the extension of Fusan Road.\*\* The dispute was settled by the Council ultimately abandoning the plan for making the road.††

\*Commissioner for Foreign Affairs to the Senior Consul, January 31st, 1918 *ibid*, p. 29-C.

†Mun. Council to the Senior Consul, April 4th, 1918, *ibid*. July 27th, and 31st, 1918.—*ibid* p. 30-C.

‡Mun. Council's Report, 1919, p. 47-B; 1920, p. 41-B.

§Mun. Council to the Senior Consul, November 19th, 1921,—Mun. Council's Report, 1921, p. 200-A.

||Messrs. Chun Beng-him and others to the Secretary of Council, January 1st, 1922,—*ibid*, p. 203-A.

\*\*Commissioner for Foreign Affairs to the Senior Consul, October 27th, and November 26th, 1921, *ibid*, pp. 201-A, 202-A.

††Mun. Council to the Senior Consul, January 20th, 1922, *ibid*, p. 204-A.

The protest from the Chinese authorities against numbering of houses situated on the outside roads, laying cables, construction and policing of them, etc., was in course of the following years becoming of such irritating frequency that the council had to draw the attention of the Consular Body to this fact with the request to communicate with the Chinese authorities impressing upon them that all actions of the Council in respect to the outside roads were "in conformity with the practice, and that it was expected that commonly regarded considerations, which were so essential to the preservation of good relations, would influence the Chinese authorities concerned to show themselves more sympathetically disposed towards the Council."\*

The Chinese point of view on the subject found its full expression in the following letter of the Commissioner for Foreign Affairs, September 16th, 1922, which we cite :

"I (the Commissioner) communicated this letter (of the Council) both to the Municipality of Shanghai North and to the Woosung-Shanghai police department, and I am now in receipt of the following reply from the former: 'We have to take strong objection to the high-handed attitude displayed by the Council's reply. The common limits of the Chinese and foreign areas are strictly defined. The Kung Ping Mill (the point in dispute this time) and the adjoining houses are entirely within the Chinese area, and as there is an official department in the Chinese territory for the carrying out of house-numbering, cable laying and kindred matters, there is no need to trouble the Settlement authorities to do our work for us. Moreover, as the world advances, justice prevails, but the Municipal Council with its plea of "following previous practice" seems to be adhering to its old policy of forcible encroachment, which is a serious blot on its reputation for enlightenment and progress.'"

It is clear that, professing such views, the Chinese authorities were logically bound to ignore all the powers conferred upon the Council by virtue of the Land Regulations and precedents† of many years, while, in its turn, the Council was compelled to ignore all their representations and threats. As a matter of fact, the Chinese authorities continued to threaten that "public feeling was much excited and it was feared troubles would ensue," but police protection was accordingly provided by the Council in places of possible conflict, and the works proceeded without serious incidents.

Since 1919, the local Chinese authorities found in their opposition to the foreigners a ready co-operation amongst the extreme political factions, who, leaving aside the merits of the matter, accused the Settlement authorities of attempting to infringe China's sovereign rights. This co-operation was endorsed by certain sections of the Chinese press which endeavoured to give the affair an importance of a nation-wide problem.

The Kiangsu-Chekiang war of 1924 and the subsequent military events of 1925, demonstrated the necessity of further construction of roads beyond the Settlement limits in the Western districts. It was absolutely necessary to increase the efficiency of

Road Extension  
Problem, 1924-  
1926,

\*Mun. Council to the Senior Consul, August 8th, 1922.—Mun. Council's Report, 1922, p. 204-A.

†Commissioner for Foreign Affairs to the Senior Consul, July 15th, and August 19th, 1922; Mun. Council to the Senior Consul, July 28th, and September 27th, 1922.—Mun. Council's Report, 1922, pp. 242-A, 243-A.

the boundary defence in view of the possibility of further complications in the near neighbourhood. A large scheme of such extension was drawn up by the Council, and steps were taken toward their realization. The events of May 30th, 1925, however, prevented these attempts of the Council to ensure the safety of the Foreign and Chinese communities.

Amongst the notorious demands presented by the Chinese Government at Peking to the Foreign Powers with regard to foreign administration in Shanghai, article ten included the demand that "The Shanghai Municipal Council shall not construct roads beyond the Settlement boundaries. The roads already constructed shall be turned over unconditionally to the Chinese Government."

The subsequent general strike declared in support of these demands shifted to the background the problem of the Settlement extension by way of construction of extra-concessional roads. The work was interrupted and the traffic on some of the newly laid roads in the Western district suspended.

The negotiations of the Diplomatic Body with the Chinese authorities at Peking remained fruitless, and, practically speaking, on May 30th, 1926, the position remained unchanged.

It was probably even more complicated than ever, as the local Chinese authorities in the meanwhile undertook the task of fixing the results attained. The old plan of surrounding the Settlement with an impenetrable barrier of a new Chinese settlement and of setting against the Western methods of administration a modern native municipality was revived and put into operation with new force. It was frankly hoped that in such a way it would be possible to ensure the final Chinese grip on the Settlement.

As a matter of fact, on May 4th, 1926, Marshal Sun Chuan-fang, the Tupan of Kiangsu and Chekiang Provinces, installed himself as Tupan of the Directorate of the Port of Shanghai and Woosung, and appointed one of the Chinese leading social workers, Dr. V. K. Ting, to act as director. The Chinese authorities did not try to conceal their ultimate aim to convert the Settlement into "an island" surrounded by the Chinese port and isolated from the mainland from which it received its vital forces:

"The boundaries of the International Settlement are definitely set forth in the treaties" (Land Regulations)—stated Marshal Sun Chuan-fang on May 5th, 1926, addressing the Consular Body, the Council and the Foreign Community at a meeting at the Bureau of Foreign Affairs.

"In recent years the population within the Settlement has been constantly increasing. The foreigners have therefore demanded the extension of the Settlement. From their point of view this seems to be a reasonable demand, but during the last 20 years the national consciousness of the Chinese has been rapidly growing, so they have never obtained the consent of the Chinese for the purposed extensions. I may say frankly that they will never obtain such consent in the future. The Shanghai Municipal Council has, however, taken measures to solve the problem in their own way, namely by the making of extra-concessional roads. You are well aware that the Chinese have repeatedly registered their protest, the effect of which has not yet died down. I may say again that it is impossible that they should die down before the dispute is settled to their satisfaction. Now we do not agree to extend the boundaries of the Settlement, and we do not allow you to make extra-concessional roads; is there no way of relieving the congestion of the Settlement? Frankly speaking there is only one satisfactory way of solving



this problem. That is to improve thoroughly the municipal affairs in the territory adjacent to the concessions so that the difference between concessions and non-concessions may be wiped out, and both foreigners and Chinese may co-operate in the most friendly way for the creation of a new and greater Shanghai."

The gist of this declaration is clear—the territory of the Settlement, instead of being increased in proportion to the economic requirements of the moment, is to be decreased to an extent compelling the foreigners to surrender it voluntarily to the Chinese.

In effect, almost simultaneously with this declaration the Chinese Police appeared on the Municipal extra-concessional roads such as Jessfield and North Szechuen Road districts. Since then and until June 15th, 1926, the Chinese police have appeared in the Connaught and Robison Road area, Brennan and Hungjao Roads and Avenue Haig—thus practically on all roads outside the Settlement limits—and exercised police control, notwithstanding the presence of the Municipal Police in the same places. The tension was slightly relieved after the Council had addressed the Consular Body with the request to take the matter up with the Commissioner for Foreign Affairs "with a view to bringing about a discontinuance of the present very unsatisfactory state of affairs."\* As a result of this protest the Chinese police patrols were partly removed, and the authorities of the Shanghai-Woosung directorate expressed themselves ready to enter into immediate negotiations concerning the return of all municipal roads beyond the Settlement limits to the Chinese authorities. The matter still remains at this point awaiting solution, which seems again to be delayed on account of the outbreak of the hostilities between Marshal Sun Chuan-fang, Tupan of Chekiang and Kiangsu Provinces, and the Cantonese government.

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\*Mun. Council to the Senior Consul, June 15th, and July 12th, 1926.—Mun. Gazette, July 15th, 1926.



## CHAPTER VI.

### MUNICIPAL LEGISLATION CONCERNING THE PRESS, 1903-1925.

General—Chinese  
Press.

The history of the modern Chinese press is closely bound up with the extraterritorial privileges enjoyed by foreigners in China. Only under protection of these privileges and within the territories of the self-governed foreign settlements and concessions could the Chinese press have attained its present importance as a factor in the social life of China.

In spite of the fact that the Chinese used moveable type 500 years before Europeans had introduced it in their printing work, newspapers and periodicals until lately were unknown in China. The only periodical published before the arrival of the Europeans in China was the "Official Gazette" in Peking which contained Imperial decrees, Court news, memorials of various officials to the Throne and information regarding the appointment of various functionaries.\*

The need of making anything public was satisfied by the traditional publication of proclamations, placards and handbills posted in the streets and freely distributed to the curious throng. This primitive form of publication was also used by the opposition for exposing public evils and the corruption of imperial officials, as well as for the laudation of their virtues, if any. All these publications were anonymous and their contents were not subject to the ethical laws which characterizes the Western press. They were intended for the streets, and their primary purpose was to create a certain effect upon the masses.

The first Chinese newspaper having some semblance to its Western colleagues was the Shanghai "Hsin Pao," which appeared in 1870 as a mere news sheet. It was succeeded by the "Hu Pao" as the "Chinese language edition of the leading British daily of Shanghai," the "North-China Daily News." Twenty years later

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\*The earliest beginnings of journalism in its organized form seem to have been in the days of the Han Dynasty, 206 B.C. to A.D. 221, when a monthly publication is said to have come into being—the "Miscellanies." This journal was of an official nature, recording the acts and decrees of the ruling dynasty, and giving such governmental news as was deemed worthy of promulgation in this manner. These papers came to have a general name, "Ge-pao," taken from *ge*, the name of the lodgings, and *pao*, the general name in China for newspapers or journals. The "Ge-pao" were published sporadically. The "Peking Gazette," or "King-Pao" appeared in the Tang Dynasty, A.D. 620 to 903, and continued until after the fall of the Manchu Dynasty in 1911, when it was permitted to die together with the ancient throne. It was published in Peking by the government and appeared in the provinces in two forms, both of which were in manuscript. One, containing about forty pages, was designed solely for the highest officers—such as the governors, lieutenant-governors, etc.; the other, of much smaller size, for inferior officers throughout the provinces. The "Gazette" in this latter form was sold to the public. S. Wells Williams, in "The Middle Kingdom," gives a further description thus: "It is simply a record of official acts, promotions, decrees and sentences; without any editorial comments or explanations, and as such is of great value in understanding the policy of the government. It is very generally read and discussed by the educated people in cities, and tends to keep them more acquainted with the character and proceedings of their rulers than ever the Romans were of their sovereigns and Senate. In the provinces thousands of persons find employment by copying and abridging the "Gazette" for readers who cannot afford to purchase the complete edition. Later on the "Gazette" appeared in printed form and had more than one edition a day, and a morning and evening publication was evolved for a short time. The evening edition containing the deliberations of the Emperor, was bound in imperial yellow, and the morning edition, containing less important news from the standpoint of official rank and authority, bore a red cover. In the latter part of the Tsing Dynasty the name was changed to "Political Gazette." Later it came to be known as the "Cabinet Gazette" and following the 1911 revolution, shortly before its expiration, the "Government Gazette." —The Univ. Missouri Bulletin, Vol., 23, No. 34; 1922.

came the "Sin Wan Pao" or "New News Journal." The "Shen Pao" and "Sin Wan Pao" also were founded originally by foreigners\* and both are still operated as foreign concerns.†

After the Sino-Japanese War, 1895, the number of Chinese papers published in Shanghai and other ports and the interior had greatly increased, but it was not until after the Revolution, 1911, that the native press spread throughout the country, until hardly a town of any importance is now without its own newspaper. However, only in the foreign settlements and concessions did the native press enjoy the freedom essential to its growth. In all other parts of China it was at the mercy of the administrative and judicial discretion of various officials who did not fail to use their privileges to strangle any semblance of free thought and opposition.

On the other hand, the Chinese press from the very start left much to be desired. It retained, in spite of the changed conditions, the old character of anonymous pamphlets which stopped at nothing in order to attain the desired effect. With few notable exceptions the Chinese newspapers were still meant for the streets and exploited the lower instincts and credulity of the masses.

The Government prosecutions of the press were particularly severe in the period of 1902-1907 when the anti-monarchical movement in China assumed under the influence of returned students very considerable dimensions. During this critical period almost the whole Chinese press, with the exception of a few newspapers published in the Treaty Ports or registered as foreign concerns with the respective Consulates of the Treaty Ports, became extinct. The Chinese Government made strenuous efforts, of course, to subject the Chinese newspapers within the Settlement of Shanghai to the same administrative discretion of its officials, but invariably met with resistance on the part of the Consular Body and the Municipal Council, which sometimes had to resort to extraordinary measures in order to ascertain the established procedure in the Settlement to deal with such matters through the respective judicial tribunals.

As an instance of such an action on the part of the Municipal Council in defending the liberty of the press, we may cite the case of the "Hua Yueh Pao," which occurred in 1902. This paper published in one of its issues a blasphemous article purporting to be taken from the Confucian Analects.

Protection of  
Chinese Press  
Case of the "Hua  
Yueh Pao"—  
1902

On January 6th, 1902, the local Taotai Yan addressed Mr. J. Goodnow, U. S. Consul-General and Senior Consul, asking him to close immediately the premises of the newspaper, situated in the Settlement. In reply to this communication, Mr. J. Goodnow stated to the Taotai that "upon investigation the Consular Body finds that the said newspaper is owned by Chinese and that the proper person to prosecute it is the Mixed Court Magistrate," and that he was instructed by the Consular Body to state that the latter "sympathized thoroughly with the Taotai in his opposition to indecent publication" and that the Consuls "will prosecute at once any indecent papers owned by foreigners."

\*The first owners and founders of the "Shen Pao" were Messrs. Major Bros., British subjects.

†The "Shen Pao" is registered as a French concern and the "Sin Wan Pao" as an American corporation.

The unfortunate wording of the Consular Body's reply having been wrongly translated into Chinese was interpreted by the Chinese authorities literally, i.e., that the Consular Body found that the issue in question was within the administrative jurisdiction of the Mixed Court Magistrate, who had to take the necessary measures to effect the closure of the premises.

The premises of the newspaper were sealed up without further consideration. However, the Municipal Council, in view of this violation of the established procedure in the Settlement, by virtue of which no punishment could be inflicted and no warrant executed until a sentence had been passed by the proper Court, instructed the Municipal Police to remove the seals and reopen the premises. The Magistrate and the Consular Body were accordingly informed. No protest ensued, and the proprietor and editor of the newspaper was directed to appear in open Court to answer the charge preferred against him by the Taotai.\*

Protecting the native press in the Settlement against the administrative pressure of the Chinese government and its agents, the foreign authorities were compelled to extend this protection and to fight against the Chinese "Draconian" legislation covering offences against the State in the press. Practically speaking there was at the described period no legislation whatever in China regarding the press, for any free thought regarding the monarchical form of the government in China, any slightest criticism of its function, could be interpreted as *lese-majeste* and the unfortunate editor or author, and even their relatives, were liable to the penalty of death. The plurality of administrative and judicial authority of the Chinese officials gave ample opportunity to put this principle into operation. The foreign administration had to exercise its utmost strength in order to ensure a minimum of justice to any person charged with the publication of seditious articles, as was done in the famous "Su Pao" case.†

"Su Pao" case—  
1903

Six native journalists, who had published a seditious article against the Chinese Emperor in a Chinese newspaper, the "Su Pao," established in the Settlement, had to face trial "wherever and whenever it might please the Government of China." The death penalty was formally decreed by the traditional constitution of the Chinese Empire as the punishment for preaching the overthrow of the reigning Dynasty. The journalists were arrested at the request of the Taotai on a warrant issued by the Mixed Court Magistrate and endorsed by the Consular Body, and would have suffered the extreme penalty had the foreign authorities agreed to comply with the demand of the Chinese Government for the extradition of the accused. The premises of the newspaper were summarily sealed up by the Mixed Court Magistrate acting under the instructions of the Taotai. However, the Consular Body refused to extradite the accused on the ground that they were amenable to the jurisdiction

\*Taotai Yan to the Senior Consul, January 6th, 1902; Senior Consul to the Taotai, February 4th, 1902; Mun. Council to the Mixed Court Magistrate, February 28th, 1902; Mixed Court Magistrate to the Mun. Council, March 4th, 1902; Senior Consul to the Mun. Council, May 19th, 1902; Mun. Council to the Senior Consul, May 20th, 1902; and Mixed Court Magistrate March 8th, 1902.—Mun. Council's Annual Report, 1902.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 109-113.



of the judicial authorities in the Settlement, i.e., the Mixed Court, and the whole question was referred to the Foreign Ministers and the Tsungli Yamen at Peking.

Meanwhile the Municipal Council refused to recognise the legality of the Mixed Court Magistrate's order to seal the premises of the newspaper, and the police received instructions not to execute it. Furthermore on July 8th, 1909, the Council placed on record the facts in the case and published for general information the following statement: \*

"At the last meeting of the Council, held on July 1st, the Captain-Superintendent of Police forwarded a document, issued by the Mixed Court Magistrate to his runners at the time of the arrest of the 'Su Pao' staff, wherein the said runners were ordered to summarily close the premises of that newspaper. *As on a previous occasion when the Senior Consul and the Shanghai Taotai ordered the suppression of a native paper without trial*, the Council's instructions were formally recorded and communicated to the Captain-Superintendent of Police, *that the closing, of the 'Su Pao' could only take effect after trial of the case and judgment given.*"

And further:—

"The Council desires at all times to act in harmony with the Chinese authorities but is unable to depart from the policy of its predecessors, sanctioned by the unanimous support of the Ratepayers, in regard to the protection of the status and liberties of native residents. The Council's attitude in this matter was clearly defined and approved at the Ratepayers' meeting of 16th May, 1902, and so long as the conditions complained of at that meeting continue to exist, so long must there be necessity for unfailing vigilance in matters affecting the well-being of native residents."

The case dragged on for many months before four of the accused were released and two were tried in the Mixed Court and sentenced to hard labour and expulsion from the Settlement. During the period preceding the trial, on which the Diplomatic Body and the Municipal Council insisted, the accused were kept in the Municipal Gaol, where they enjoyed the privileges usually accorded to political prisoners in civilized countries.

The Municipal Council, as we have seen, in this case exerted all its influence in order to defend the immunity of the native press in the Settlement from administrative control of Chinese officials. It was realized, however, that in affording this protection, the Council had not to lose sight of the fact that in case of unrestricted protection of the native press the Settlement might easily become a place where the freedom of the press could be used for the preaching of illegal doctrines and agitation against the lawful government of China, which was contrary to the principles and wishes of the law-abiding foreign community.

It was also realized that in fighting for the non-extradition of the journalists the Council had assumed a certain responsibility to the Chinese Government with regard to the activity of the Chinese press in the Settlement. The Council had to supervise this activity and to check any abuses tending to endanger the peace and order

First efforts to regulate the activities of the native press in the Settlement, 1904.

\*Extract from the Minutes of the Council's meeting of July 8th, 1903, Municipal Council's Annual Report 1903. The date of the meeting was wrongly given in the Report as being July 8th, 1904, owing to which the same error crept into the article regarding the "Su Pao Case" in the "Shanghai: Its Mixed Court and Council,"—1842-1924.—AUTHOR.

not only of the Settlement, but also of the country at large. For this purpose the Settlement authorities had to be provided with a special instrument in regard to the printed matter in conformity with the existing status in the Settlements. The solution of this complicated problem should have apparently been sought in the Land Regulations for the Foreign Settlement of Shanghai, whereby the foreign community had the right to elect an Executive Committee or Council for the administration of the Settlement, and which could, if the necessity arose, be empowered to formulate Bye-laws not conflicting with the provisions of these regulations.

"In the present 'Su Pao' case,"—cabled the Municipal Council to Baron Czikann de Wa' lborn, Doyen of the Diplomatic Body at Peking, on July 22nd, 1903, "four out of six prisoners are apparently neither connected with the publication of the 'Su Pao' nor with the Aikuo Patriotic Association to which the Imperial Edict specially refers; their offences are unstated, their identity unproved; to hand the defendants over for summary execution without according them an opportunity to prove their innocence would bring lasting disgrace to the Powers concerned in the good government of the Foreign Settlement and seriously prejudice its future administration."

And further:—

*"The Council suggests that the Diplomatic Body should assure the Chinese Government that to prevent future possibility of offensive or seditious publications in the Foreign Settlement, steps will forthwith be taken by the Diplomatic and Consular Bodies and the Council to have the supervision and control of native papers made a subject of local legislation with the view to licensing them under Bye-law 34 attached to the Land Regulations, a measure which would undoubtedly remove all cause of future trouble."*\*

The idea of Municipal legislation for the native press in the Settlement did not, however, receive further development. In reply to the Council's communications, the Ministers of the Treaty Powers at Peking stated that "in matters concerning jurisdiction, the Municipal Council has no right of any interference; the questions of this nature are to be dealt with only by the Consular Body or Diplomatic Body when the latter is consulted."†

The Council's suggestion in respect to the proposed legislation was passed by the Ministers without comment, but the tone of the remark concerning the right of "interference" by the Council left very little room for any optimism as to the fate of any measure which might have been advanced by the Council.‡

Thus the first efforts of the foreign administration of the greatest centre in China to regulate by legislative measures the operation of the press failed to materialize. The results, however, of the campaign for the liberation of the native press in the Settlement from direct influence of the Chinese administration were so important that they reconciled the community for the time being to this apparently abnormal state of affairs. The principle was definitely established. The Chinese press within the limits of the

Chinese Press subject to the jurisdiction of the Mixed Court, 1904-1906

\*The contents of this telegram were forwarded to the Consular Body on July 23rd, 1903, and confirmed in a letter to Baron Czikann de Wahlborn, H. J. R. A. M.'s Minister and Doyen of the Diplomatic Body at Peking, on July 25th, 1903.

†Baron Czikann de Wahlborn to Mr. J. Goodnow, U. S. Consul General and Senior Consul, August 10th, 1903; Mr. J. Goodnow to Mun. Council, August 26th, 1903.—Mun. Council's Report, 1903.

‡Mun. Council to Mr. J. Goodnow, U. S. Consul-General and Senior Consul, August 29th, 1903.—Mun. Council's Annual Report, 1903.

Foreign Settlement was thenceforth subject to the jurisdiction of judicial authorities, which ensured the editors of the newspapers and journalists a proper trial before any punishment could be inflicted on them. This likewise assured to them humane treatment according to Western judicial principles, as the tribunal called to try them was the Mixed Court, the Bench of which was occupied by a Chinese Magistrate and a Foreign Assessor. The influence of the latter on the issue of cases before the Court had already attained at that time such dimensions as to counteract the possible pressure of the Chinese Administrative authorities upon the Magistrate and his instinctive prejudice, as an orthodox mandarin, against any free thought. However, the liberal tendency displayed by the Imperial Government from 1906 up to the Revolution, 1911, relieved considerably the difficult task of protecting the freedom of the press, until in 1912 the promulgation of the Provisional Criminal Code of the Republic of China put an end to the indefinite position with regard to offences against public order and actionable statements reflecting upon reputation and credit.\* The provisions of the Code, in general, were extremely vague and in many respects inadequate, but they contained a general outline of a specification of offences and provision for punishments which were not repugnant to Western legal principles. Furthermore, the Provisional Constitution of the Republic of China of 1914 proclaimed freedom of speech and liberty of the press,† though owing to the absence of the legal machinery necessary to carry out these

Provisions regarding the press in the Provisional Code, 1912.

\*Section XVI.—Of offences against Public Order,—Art. 221., Draft, Ed. 1912.

Section XXXI.—Of Offences against Reputation and Credit, Art. 316-322. Draft, Ed. 1912.

Article 316.—Whoever publicly offers any insult to another, shall be punished with detention, or with a fine of not more than 300 yuan.

Article 317.—Whoever makes or circulates any defamatory statement against another with intent that the same may be communicated to three or more persons is said to commit an offense against reputation, and shall be punished with imprisonment for a period of not more than six months, or with detention, or with fine of not more than 500 yuan.

Whoever by circulating written words, drawings or pictures commits the offense specified in the preceding paragraph, shall be punished with imprisonment for a period of not more than one year, or not more than one year, or with detention, or with detention, or with fine of not more than 1,000 yuan.

Article 318.—A person shall not be punished for an offense against another's reputation if he proves that the statement is true; provided that he shall be debarred from proving the truth of any statement concerning the private life of the injured party the publication of which is not of public benefit.

Article 319.—Whoever makes a statement in good faith in any of the following circumstances:—

1. By way of self-jurisdiction or self-defense, or for the protection of a lawful interest;
2. In a report made by a public officer within his official functions;
3. By way of fair comment on anything subject to public criticism;
4. By way of fair publication of the proceedings of any deliberative assembly, whether national or local, or of any court of justice, or of any public meeting;

shall not be punished for an offense against reputation.

Article 320.—Whoever commits an offense against reputation by making or circulating any statement which he knows to be false, shall be liable to the punishment prescribed for the offense increased by one-third.

Article 321.—Whoever publicly offers any insult to the memory of a deceased person, shall be punished with detention, or with fine of not more than 300 yuan. Whoever commits an offense against reputation in respect of the memory of a deceased person by making or circulating any defamatory statement which he knows to be false, shall be punished with imprisonment for a period of not more than one year, or with detention, or with a fine of not more than 1,000 yuan.

Article 322.—Whoever injures the credit of another by fraudulent means or by circulating rumours, shall be punished with imprisonment for the same period and fine of the same amount or with both detention and fine of the same amount.

†The permanent Constitution of the Republic of China passed by the Conference at Peking in 1923, contains the same guarantees.



Chinese Legislation concerning the Press. Press Law of the 3rd year of the Republic, 1914.

guarantees and the extent of power vested in the President, the proclaimed principles very soon became a dead letter.

The start was made by the late President Yuan Shih-kai in 1914 by the promulgation of the so-called *Press Law* and the *Law of Publication* of the 3rd year of the Republic. \*

The *Press Law* provided for the licensing of all periodicals and security to be furnished by the newspapers for "good behaviour." The entire law contained thirty-five articles, which provided in brief as follows :

(1) Newspapers were divided into six classes—dailies, periodicals having an indefinite period of publication, weeklies, ten-day periodicals, monthlies and annuals.

(2) The publisher was required to register at the central office of the police administration in the city of publication, giving the name of the publication, its character, frequency of its issuance, the names, ages, addresses and other personal information regarding each of its publishers, editors and printers.

Having complied with the requirements set forth here it was either approved or disapproved by the police administration. In the former case it was given a license, the required information being sent to the Ministry of the Interior.

(3) Those who passed the age of 30 and who did not belong to one of the following classes, were allowed to be publishers, editors or printers:—Persons who had no definite place of lodging, persons feeble-minded or insane, persons deprived of the privileges of citizenship, persons connected with or in the service of the army or navy, executive and judicial officials, and students.

(4) The same person could not be both an editor and a printer.

(5) When the approval of the police administration was received the publisher had twenty days before the issuance of his journal, to deposit security at the following rates: Dailies, \$350; periodicals having indefinite periods of publication, \$300; weeklies, \$250; ten-day periodicals, \$200; monthlies, \$150; and annuals, \$100.

Publishers in the national capital, provincial capitals, commercial cities and Treaty Ports had to furnish security at double the standard rate.

Periodicals devoted to literature, arts, statistics, official documents, reviews of books, and prices of commodities exclusively were exempt from paying the security. The security was returned to the publisher whenever his activities as an editor and owner ceased either on account of government interference or of his own volition.

(6) In every issue of the publication, the names and addresses of the publisher, editors and printers had to be published.

(7) On the day of publication of every issue one copy had to be sent to the police administration for examination.

(8) Matters of the following natures might not be published:—Attacks against the existing government; endangering public safety and general order; matters that tended to corrupt the morals; secret diplomatic relations, military affairs, and other official communications; unsettled legal cases and their proceedings at whose hearing admission had been denied to the general public; proceedings in Parliament and other official meetings at which the general public was not permitted, according to the Constitution; attempting to instigate, protest, praise or save criminals, the accuser in a criminal case or attempting to harm the accused; malicious attacks upon the personal character, revealing one's secrets and defaming one's reputation.

The penalty clauses of this peculiar example of Chinese constitutional legislation provided the following punishments for transgressions of its provisions:—Fines from M.\$5 to M.\$200;

\*Both laws were promulgated simultaneously in the 4th moon, of the 3rd year of the Republic, corresponding to December 1914.—AUTHOR.

imprisonment from 2 months to 3 years (4th and 5th degrees); cancellation of license, confiscation of property belonging to a newspaper or publishing establishment. Acceptance of a bribe by a publisher made him and the giver liable to a fine in a sum ten times the bribe and the same was to be confiscated. If an author had his name published in the paper, his responsibility was the same as that of the editor. Even the printer in a case where he had no knowledge of the nature of the incriminating article printed in his printing establishment without his consent or permission, was not exempt from punishment. His property was also liable to confiscation. The punishment of imprisonment, confiscation of property and complete suppression of the publication was left to the jurisdiction of courts, all others were to be dealt with by the police.

The Law of Publication\* though milder in its provisions, provided similar rules and was inspired by the same idea of the subordination of all printed matter to the strict control of the administrative authorities. The police were vested with power of censorship and confiscation of publications, which did not suit the tastes of the government or its agents.

Law of Publication of the 3rd year of the Republic, 1914.

The promulgation of these laws aroused great indignation not only among the interested circles of publishers and journalists, but also among the Chinese public at large, for their enforcement meant a complete suppression of the operation of the press in the country, contrary to the liberties announced by the Constitutional Charter of the Republic. It was a bold attempt on the part of a militarist government to abolish with a single stroke all the achievements of the Chinese democracy obtained after long strife. It meant a return to the old monarchical system of personal discretion, which hardly could be enforced, owing to the general opposition of the whole country. In fact, the *Press Law* was never put into effect even in the metropolitan area where the government enjoyed complete control. As far as the provinces were concerned, none of the provincial authorities dared to enforce it under the threat of losing the social support upon which they depended much more than upon the Central Government. In regard to the Foreign Settlement in Shanghai, the question concerning the application of the *Press Law* had never even arisen. It was too repugnant to the spirit of the foreign administration in the Settlement to be taken in earnest. It was in the eyes of the Foreign Community a joke on the part of a Government playing its last card.

As a matter of fact, the unfortunate *Press Law* was already repealed in the 5th year of the Republic (1916) by the successor of the autocratic régime of President Yuan Shih-kai.† It was provisionally substituted by the *Law of Publication*, in which, as stated in the explanation of the Supreme Court,‡ the term "author" designated "editor" in the Press Law, and which survived up to January 29th, 1926, when it was finally repealed by an act of the Ministry of Justice approved by the Chief Executive, Tuan Chi-jui. Of course, such a substitution could not settle the complicated

\*See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 554-555.

†President Li Yuan-hung, 1916-1924.

‡Instruction N614, Character "Tung" of the Supreme Court at Peking, 1917.

matter of press legislation, in view of a complete inadequacy of regulations intended to deal solely with publications other than periodicals and transformed by a whim of the Ministry of Justice into a press law. It remained for many years a dead letter until the urgent necessity of some kind of regulations for the press revived its operation.

However, both laws left a very deep mark in contemporary Chinese legislation. Their promulgation was the primary cause of the repeal of the section relating to Offences against Reputation and Credit of the Provisional Criminal Code, Art. 316-322, Draft Ed. 1912, leaving a blank space in the specification of this kind of offences, and virtually transforming criminal libel proceedings into a civil suit for recovery of damages. \*

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\*The only articles of the Provisional Criminal Code now in force dealing with offences against reputation and credit are Art. 359 and 362, which owing to the indefiniteness of their wording practically precludes the institution of criminal proceedings against any libellous statement in the press, which is so characteristic of the nowadays Chinese press.—AUTHOR.



## CHAPTER VII.

### MUNICIPAL LEGISLATION CONCERNING THE PRESS, 1903-1925

(Continued)

The seditious work of the Chinese press has been for the last twenty years directed mainly against foreigners and against the same foreign administration of the Settlement which afforded it protection. \* During the period preceding the notorious disturbances in the spring 1913 and autumn 1915 the press campaign of unbridled violence with outspoken incitement to insurrection lasted for more than three months, and resulted in a complete upset of normal life in the Settlement. † In order to check this campaign the Municipal Council had either to insist on the application of the unpopular *Press Law* and *Law of Publication*, then still in force, or to resort to municipal legislation of the press.

The repeal of the *Press Law* of the 3rd year of the Republic by President Li Yuan-hung gave an impulse to the revival of this legislation. At the Special Meeting of Ratepayers on March 21st, 1916, the Council proposed a resolution concerning certain amendments in the Municipal Bye-laws and regulations. According to this resolution the following provision was to be included under Bye-law XXXIV: "*no person shall hawk or publish any newspaper or periodical, or exhibit any advertisement, in each or any of the above cases within such limits without license first obtained from the Council and in the case of a foreign person countersigned by the Consul of the nationality to which such person belongs.*"

Municipal Licensing of printed matter. Project of 1916.

According to the further wording of the Bye-law, the Municipal Council was authorized "*in its absolute discretion to refuse or waive the issue of any such license or permit without assigning the reason for such refusal or waiver and to impose such conditions and exact such security as the nature of each particular license or permit may in its discretion require, and to charge such fees in respect thereof as may be authorized at the Annual General Meeting of Ratepayers.*"

The penalty provision of the Bye-law stated that "*any person offending against or infringing the provisions of the Bye-law, or against any of the conditions appearing in any such license or permit as aforesaid, shall be liable to a fine not exceeding one hundred dollars for a first offence, two hundred and fifty dollars for a second offence and five hundred dollars for a third or subsequent offence and in the case of a continuing offence to a further fine for every 24 hours' continuance of such offence not exceeding one hundred dollars for every twenty-four hours and in addition to such fines as aforesaid shall be liable to confiscation to the use of the Council of any goods, merchandise, articles or things of a dangerous nature included in this Bye-law and in respect of which such offence has been committed.*"

\*Captain A. M. Bolsragon's Report, Mun. Council's Annual Report, 1905, p. 29. Proclamations of the Taotai, dated January 11th, 1908: September 9th, 1909: September 26th, 1909: September 19th, 1900.

†Captain-Superintendent's of Police Reports for 1913 and 1915—Mun. Council's Annual Reports, 1913 and 1915.

The penalties and fines set out in this Bye-law were to be recoverable in a summary manner before a Consular Court or Court having jurisdiction over the person concerned. In addition to that and without prejudice to the right of the Council, the Council could suspend any license or permit. Furthermore, the Council was authorised from time to time, after 14 days' previous notice, to extend any of the provisions of this Bye-law "*in such manner as it may in its discretion think fit.*"

Thus, frankly speaking, the Council in its attempt to solve the complicated problem of the regulating of the native press in the Settlement resorted finally to the same "administrative discretion," which characterized the notorious Chinese legislation of the 3rd year of the Republic. The only exception was that the exercise of this "discretion" did not this time rest in the hands of ignorant and corrupt Chinese officials, but in the hands of the representatives of the Shanghai foreign community.

It was not at all surprising that the proposed measures met with very severe criticism on the part of the ratepayers,\* in spite of the apparent necessity to restrict the activity of the extremist section of the Chinese press and to eliminate the seditious anonymous publications. The projected measure was referred for revision to a Special Committee, nominated and appointed by the Council,† and was again submitted to a special meeting of ratepayers on March 21st, 1917.

Municipal licensing of printed matters, project of 1917.

The Special Committee appointed for revision of the Bye-law gave quite a new aspect to the proposed licensing of the press. In the first place the Committee subdivided Bye-law XXXIV into separate items under respective letters, and revised entirely its wording by specifying matters relating to the press and subject to Municipal licensing.

The right of the Council to refuse, withdraw or suspend licenses in its discretion was, according to this project, subject to an appeal to a special Committee called Licensing Committee of Appeal, composed of not less than three nor more than five members appointed by the Council (Bye-Law XXXIVF). In every case of refusal, withdrawal or suspension of licenses the Council has to give reasons for so doing. The issuance of licenses or permits was to be made by the Council within a reasonable time not exceeding 14 days from the date of application. If refused, announcement to this effect should be made within a period of time not longer than 21 days from the date of filing the application. Further, the Municipal Council's right to waive the obligations contained in the Bye-law with reference to the obtaining of any particular class of licenses by any particular class of persons, by virtue of the provision contained in the following Bye-law XXXIVF, was subject to review at any ratepayers meeting. A similar provision was made with regard to securities if required by the Council from the licensees. Finally the Committee made a recommendation to the effect that "*the Council should exercise their right of cancelling or suspending license or permit only in cases of urgency or absolute necessity.*"‡ Thus

\*Mr. E. S. Little's speech at the Special Meeting of Ratepayers on March 21st, 1916.—Mun. Gazette, March 22nd, 1916.

†Messrs. E. S. Little, W. McMurray, D. McNeill, W. A. C. Platt and A. G. Stephen.

‡Mun. Council's Annual Report, 1918, p. 75 B.

all or most of the defects of the first projected Bye-law were eliminated and it was confidently anticipated that the Consular Body and the foreign Ministers at Peking would sanction the measure. However, in anticipation of possible objection on the part of the Consular Body and Ministers, the meeting of the ratepayers empowered Sir H. W. De Sausmarez, chairman of the meeting, to "make in consultation with the Consular Body such verbal alterations as might be deemed necessary in the proposed bye-law, as they might approve."\*

After a prolonged period of waiting, the Consular Body, however, notified the Council of its disapproval of the Bye-law, forwarding at the same time a draft of the Bye-law approved by the Consuls. †

Municipal Licensing of printed matter, project of 1918.

The main objection raised by the Consular Body was in respect to the penalty clauses, which, in the opinion of Consuls, could not be applied in all the different Consular courts, which had their own national laws to follow. Further objection was raised in regard to the institution of a Committee of Appeal and licensing of the foreign press. The Consuls wished to see licensed only the Chinese press.

As a result of all these differences of opinion the Bye-law was shelved for another year when the social conditions in the Settlement pointed out with new force the necessity of some urgent measures against the Chinese press.

In fact, the situation in Shanghai was serious. The anti-Japanese movement and boycott in the country threatened to assume formidable proportions and resulted in grave disturbances in Shanghai. "The Settlement swarmed with political and other adventurers, who were prepared at any time to further a movement which would bring grist to their mill."‡ Bolshevist literature was found being freely distributed in the Settlement. Wild rumours were circulated that the Japanese were poisoning water and foodstuffs to exterminate the Chinese. The Chinese press with few exceptions "continued daily to publish reports of imaginary poisoning cases which led Chinese residents to believe that they were true." "Handbills and cartoons of all descriptions were posted, and no less than 500 different kinds came into the hands of the police. Some of these were issued by schools while others were the work of individual patriots. Many also were anonymous. Several newspapers, notably the 'Salvation Daily News' and the 'Students' Union Daily,' made their appearance to support the boycott and strike."§ Neither the police, which had to deal daily with 40 newspapers published in Chinese, one-half of which did not insert the names and addresses of their editors and printers or the addresses of their offices, nor any other Settlement authority were able to stop the flood of seditious propaganda which poured into the excited Chinese masses.

On June 18th, 1919, Mr. A. Wilden, Consul-General for France, informed the Council that the newspaper "Kiou-wang-ji-pao" was for ever closed according to the decision of the French Mixed

French Consular Measures to cope with the situation. Ordinance of 1919.

\*Sir H. W. De Sausmarez to Mr. D. Siffert, Senior Consul, March 22nd, 1917.

†Mr. K. E. Newman, Secretary, Traffic and Licensing Bye-laws Committee, to Mr. N. O. Liddell, Acting Secretary, Municipal Council, March 19th, 1918.

‡Major A. Hilton Johnson's, Acting Commissioner of Police, Report for 1919.—Mun. Council's Annual Report, 1919, p. 66A.

§Mun. Council's Annual Report, 1919, pp. 87A, 88A.



Court, which at the same time sentenced its editor to the maximum penalty provided by the Chinese law, i.e., a fine of \$100.\* On June 26th, 1919, Mr. A. Wilden transmitted to the Council a copy of an ordinance, which he issued in regard to newspapers in Chinese edited in the French Concession.

"The abuses committed by the Chinese press revealed by the recent unrest" stated Mr. A. Wilden in his letter to the Council, dated June 26th, 1919, "have led me to take these measures which are equally applicable to Chinese newspapers registered in the name of French subjects and published in the International Settlement: these newspapers have at my request recognized the jurisdiction of the French Mixed Court. Should any misdemeanour be committed by newspapers in this last category, I shall be obliged if you will kindly advise the Captain-Superintendent of Police in the International Settlement so that the delinquent be brought before the French Mixed Court." †

The firm stand displayed by the French authorities and the uncertainty as to the fate of the proposed amendment of Bye-law XXXIV caused the Council to seek the support of the French Consul-General in connexion with the proposals to be made at the forthcoming special meeting of ratepayers. ‡

As a matter of fact, a very considerable opposition immediately manifested itself towards this proposal not only amongst the Chinese, who viewed the licensing of their press as a humiliation of their national pride, but also amongst foreigners unsatisfied with the form and wording of the regulation. § Finally it was decided, rather than fail to obtain any powers in respect of licensing of printing establishments and the press, that such power should be

\*Mr. A. Wilden, French Consul-General, to the Mun. Council, June 18th, 1919.

†French Consular Ordinance N5 (Translation). We, August Wilden, Consul in Charge of the Consulate-General of France at Shanghai, Chevalier of the Legion of Honour, pursuant to Article B of the Regulations for the French Consulate, dated April 14th, 1868, have ordered and order as follows:—

Art. 1.—No establishment for the publication of magazines, pamphlets, tracts and Chinese newspapers shall open in the French Settlement without the authority of the Consul-General for France.

Art. 2.—The request for the authorization provided for by the preceding Article must clearly state the name of the responsible editor and the object in view. The deposit of the Articles of Association of the publishing company, if there is need, should also be made at the same time as the request.

Art. 3.—If the request is approved, no printed matter, tract, magazine or newspaper, shall be put into circulation without the previous lodgment of a copy with the French police and the French Consul-General.

Art. 4.—If the Police discover that any publications edited are against public peace or against morality, the responsible editor and author as well as, if need be, the printer, will be prosecuted in the Mixed Court and punished according to law.

Art. 5.—Any establishment opened in contravention of the provisions of Article 1, will be closed at any time by the Police who will moreover prosecute the offenders in the Mixed Court.

Art. 6.—This Ordinance will have effect from the date of its publication.

Art. 7.—The Chief of Police is charged with carrying out of this Ordinance.

Issued at the Consulate-General of France. (Signed) A. Wilden. June 20, 1919.

Article 3 of this Ordinance was on June 30, 1919, amended to the effect that the lodgment of a copy previous to the putting into circulation of any printed matter, tract, magazine or newspaper was substituted by the provision that "*no printed matter, tract, magazine or newspaper shall be put into circulation without lodgment of a copy immediately after printing.*"

This Consular Ordinance is still in force in the French Concession and in February, 1926, the Russian daily "Zaria" was required to comply with its provisions.—AUTHOR.

‡Mr. F. C. Pearce, Chairman, Mun. Council, to Mr. A. Wilden, French Consul General, June 28th, 1919.

§At a joint meeting of the Executive Committees of the American Chamber of Commerce of China and the American Association of China the following resolution was unanimously adopted: "Resolved that this meeting is in favour of some form of justifiable legal control over seditious publications, but cannot support the Amendment to the Municipal Bye-laws in its present form because it is against American principles and because it will not accomplish the object for which it is proposed." J. B. Powell, Secretary of the Amer. Chamber of Commerce, to the Chairman Mun. Council, July 8th, 1919.

sought with the proviso that the necessary license conditions should first be approved by the ratepayers in meeting assembled and thereafter confirmed by the Consular Body before they were put into operation. An additional Bye-law with the license conditions considered desirable by the Council was accordingly drafted and embodied in the text of Bye-laws, which were submitted to the ratepayers and passed at their special meeting held on July 10th 1919.

The license conditions approved by the ratepayers were as follows :

"(1) That the license be exhibited in a conspicuous place upon the licensed premises.

(2) That free access be given to the police on duty and to officers of the revenue office.

(3) That the title of any newspaper periodical paper or other printed matter on the licensed premises, be duly registered.

(4) *That the name and address of the licensee be printed upon the first leaf and, if it consists of more than one leaf, upon the last leaf of all lithographs, engravings, newspapers, periodicals and printed matter of whatever description before the same are published or put into circulation.*

(5) That no matter of an indecent or obscene character be printed, lithographed, engraved or otherwise reproduced or published by the licensee or upon the licensed premises.

(6) *That no matter of a seditious or scurrilous character or of a character that is calculated to incite to a breach of the peace or to the disturbance of good order be printed, lithographed, engraved or otherwise reproduced or published by the licensee or upon the licensed premises.*

(7) That any matter printed, lithographed or otherwise reproduced or published in breach of Conditions Nos. 5 and 6 hereof be liable to seizure and confiscation by the police and the licensee liable to prosecution. That upon any breach of Conditions No. 6 hereof the licensee be subject in times of unrest to immediate suspension until the Court to which the licensee is amenable shall have pronounced its decision in action to be brought forthwith by the Council against the licensee, whereupon the suspension shall be removed, continued or made permanent as the court may recommend and that under no other circumstances whatsoever shall the licence be suspended except upon the recommendation of the court, to which the licensee is amenable in action first taken by the Council against the licensee and then only for the period for which such suspension shall be recommended by the Court."

The Municipal Council thus put forward quite a satisfactory project, which distinguished itself to great advantage from all regulations concerning the press then in force in foreign settlements and concessions in China.\* The licensing of the press was to be put under strict control of public institutions such as ratepayers meetings, Courts and the Consular Body. The complicated problem in regard to jurisdiction would not be affected in the slightest degree by the Bye-law and licensing conditions, while the foreign community would possess a weapon not only to combat the printing and publication of indecent, seditious and inciting literature, but to preserve the traditional political neutrality of the Settlement as well.†

In fact, were any regulations concerning the press to be enforced within the Settlement, the proposed form was the most satisfactory one ever advanced by the Council. However,

\*French Concession in Shanghai, British Concession in Hankow, British Concession in Tientsin were in possession of different sets of regulations governing the press within their respective limits.—AUTHOR.

†Mr. E. O. Pearce at the Special Ratepayers Meeting, July 10th, 1919.—Mun. Council's Annual Report, 1919, p. 240A.

its fate was that of its predecessors. On December 13th, 1919, the Consular Body informed the Council regarding their assent to a series of newly proposed Bye-laws amongst which there was no mention made regarding the Bye-law licensing the press.

Project of Municipal registration of printed matter, 1920.

However, the need of some instrument checking the scurrilous and anonymous section of the Chinese press was so pressing that, even after repeated failures, the Council submitted to the ratepayers in the following year a draft of a Bye-law forwarded to the Council by the Consular Body. The latter brought down the contemplated scheme of regulation of the press to a mere registration of Chinese newspapers with the Municipal Council, and of foreign publications with the respective consulates.

Projects of 1921, 1922, 1923, 1924 and 1925.

But the ratepayers at this time displayed complete indifference to the proposed measure. They failed to attend the meeting in sufficient numbers and to form the necessary quorum prescribed for special meetings by the Land Regulations. The same happened in the following year, 1921, when the Council again submitted to the consideration of the ratepayers the proposed Bye-law.\*

In 1922 the Council's attempt to secure the acceptance of the required resolution met not only with the indifference of the ratepayers, but also a very extensive campaign of propaganda on the part of the Chinese community to defeat the proposed scheme of registration of printed matter. The protest of the Chinese community was based on the consideration that should this measure be passed and put into force, it would seriously hamper the printing and publishing trades and cause numerous difficulties to business and education, and that it would also impair public interests and freedom of speech. This protest was lodged with the Waichiaopu and on March 28th, 1922, Mr. T. Raaschou, Consul-General for Denmark and Senior Consul, forwarded to the Council a copy of a communication from the Commissioner for Foreign Affairs, in which the latter stated that he had received two despatches from the Waichiaopu concerning the protests of the Shanghai Chinese Chamber of Commerce and others, which in the opinion of the Ministry were of considerable weight. Acting on these instructions the Commissioner lodged a protest with the Consular Body desiring them to direct the Municipal Council to have the proposed Bye-law cancelled.† The Council pointed out in reply that there was a good deal of misrepresentation, through propaganda by vested interests, as to the scope and objects of this proposed Bye-law, which so far as the Council was concerned would be very simple and in any case not embarrassing to the responsible Chinese press. The real object of the Council was to keep a check on printed matter having in view only scurrilous and seditious papers and pamphlets.‡

On April 11th, 1922, the Senior Consul forwarded a new protest of the Commissioner for Foreign Affairs, dated March 30th, 1922, embodying a letter signed by the Booksellers' Guild, the Booksellers' Association, the Press Association and the Booksellers' and Journalists' Union of Shanghai, in which they stated that "the

\*Special Ratepayers' Meetings, March 17th, 1921 and April 19th, 1922.

†Commissioner for Foreign Affairs to the Senior Consul, March 16th, 1922.

‡A. Brooke Smith, Chairman, Mun. Council, to Comm. G. de' Rossi, Consul-General for Italy and Senior Consul.



Bye-law is much too far-reaching in its scope, its requirements are far too minute and exacting, and should it be passed all concerned in printing would find themselves constantly entrammelled in the meshes of the law."

The attitude assumed by the Chinese was irreconcilable. All efforts to mediate undertaken by the Consular Body remained fruitless\*. The Municipal Council published a minute † with a view to dispelling any doubts that might exist as to its intentions and the scope of the proposed Bye-law, but of no avail. The ratepayers failed to attend the meeting in the requisite number to form a quorum, and the proposed resolution had to be postponed. Further attempts were made in 1923 and 1924 ‡ and again with the same result, though the notorious rôle of the Chinese press in the local disturbed situation formed the subject of constant reports on the part of those responsible for the peace and order of the Settlement. §

The comments of the police authorities in respect to the activity of the native press were justified. Nevertheless, the proposed registration aroused unanimous opposition not only on the part of Chinese extremist political and social factions, but also of the moderate elements of the Chinese community. Twenty-six different organizations signed a joint protest against the proposed measure. || The latter in its terms was more moderate than the corresponding Law of Publication of the 3rd year of the Republic (1914), at that time still in force, substituting the Press Law, but nevertheless its proposal aroused indignation on the part of the Chinese.

The protest was forwarded to the Municipal Council through the China Advisory Committee on April 12th, 1924, and contained the following passages :

"Such a law, if in force, would bring about continuous complications, which will place it beyond the ability of the Municipal Council to handle the matter smoothly and justly, for it would soon become the weapon of certain undesirables to harm reputable residents in Shanghai by publishing seditious pamphlets with the name and addresses of the person whom they hate."

And further :—

"To conclude, the undersigned organizations feel that the above mentioned cases are beyond reason to enforce, beyond power to enforce, and beyond necessity to enforce. Hence we voice our opposition unanimously by means of this letter."

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\*Comm. G. de' Rossi, Consul-General for Italy and Senior Consul, to H. E. Hsu Yuan, Commissioner for Foreign Affairs, April 11th, 1922.

†Mun. Gazette, April 19th, 1922.

‡Special Ratepayers Meetings, April 15th, 1923, and April 16th, 1924.

§Mr. K. J. McEuen, Commissioner of Police, Report for 1923 and 1924, Mun. Council's Reports for the respective years.

||The letter was signed by the Gold Merchants' Association, Chinese Cotton Mill Owners' Association, Metal Dealers' Association, Chinese Exporters' Association, Shanghai Hide and Skin Guild, Chinese Association of Foreign Goods Merchants, Chinese Shipping Hong Guild, Chinese Publishers' Guild, Chinese Cotton Merchants' Association, Shanghai Paper Association, Lumber Dealers' Association, Coal Merchants' Association, Iron Merchants' Association, Chinese Egg Factory Owners' Association, Shipping Brokers' Guild, Cotton Yarn Guild, Shanghai Bankers' Association, Shanghai Native Bankers' Guild, Shanghai Piece Goods Guild, Shanghai Flour Mill Owners' Association, Shanghai Daily Newspapers' Association, Shanghai Tea Guild, Shanghai Silk and Cocoon Guild, Shanghai Sugar Merchants' Guild, Chinese Cereal Merchants' Association, the Chinese Publishers' Union, and the Board of Directors of the Chinese Ratepayers' Association.

In conclusion the letter expressed the regret that "the Chinese ratepayers had no voice in the ratepayers' meetings and were deprived of their civic rights," and an ill-hidden threat that, "if such objections are ignored, we beg the Chinese Ratepayers' Association to consider the matter carefully and plan some substantial means to oppose their enforcement, so as to prevent unbecoming hardships, which may disturb the situation of this city at large."

It must be admitted that these twenty-six organizations represented practically the entire Chinese mercantile and professional communities in Shanghai, and their opinion could not be disregarded. Although very considerable progress had been made in the framing of the Bye-law since 1916, still the indefinite and broad definition of "printed matter" subject to municipal registration could not even satisfy a very lenient judicial criticism. In fact, the wording of the Bye-law proposed by the Council in regard to the definition of "printed matter" subject to municipal registration was couched in very indefinite terms so as to prevent the occurrence of misinterpretations and misunderstandings.

The full text of the Bye-law is as follows:—

*Printed Matter.*—"Any person who shall print (which term shall for the purposes of this Bye-law include any mechanical mode of reproduction) or publish, or cause to be printed or published, any newspaper pamphlet circular handbill leaflet placard or other paper containing public news intelligence or occurrences or any remarks or observations thereon, and shall not prior to such printing or publishing have registered or caused to be registered, in the case of foreigners with the Consul of the nationality to which such person belongs and otherwise with the Municipal Council, his name and usual places of abode and business or shall knowingly have made or caused to be made any misrepresentation or omission whereby such registration shall be misleading; and any person who shall print any paper whatsoever which shall be meant to be published or dispersed and who shall not print upon the front of every such paper, if the same shall be printed upon one side only, or upon the first or last or editorial leaf of every paper which shall consist of more than one leaf, in legible characters, his name and usual places of abode and business; and any person who shall publish or disperse, or assist in publishing or dispersing, any such paper on which the name and usual places of abode and business of the person printing the same shall not be printed as aforesaid, shall be liable to a fine not exceeding three hundred dollars or to imprisonment not exceeding three months or to any such other penalty as shall be prescribed by the law to which such person is amenable."

On the other hand, the reference of the Chinese guilds to the possible abuses on the part of unscrupulous publishers in regard to the Bye-law's requirements to publish names and addresses of the editors and publishers was very characteristic. It showed the true standard of the ethics of the Chinese press and explained the psychology of the Chinese editors and publishers in having persistently avoided the publication of names and addresses, as well as the reason of the opposition of the Chinese community at large to any measure against the anonymity of the press.

As a matter of fact, the state of affairs in regard to the obnoxious activity of the Chinese press in the Settlement grew to such an extent that the foreign police authorities had to raise the question concerning the application of the unpopular Law of Publication of

the 3rd year of the Republic (1914), the application of which the foreign administration had carefully avoided since its promulgation.

A charge under this law was brought forward by the police on February 20th, 1925, against the editors of Chinese newspapers "Ming-Kuo-Pao," "Shanghai Journal of Commerce" and "Chun-Hua-Hsin-Pao." However, upon the Mixed Court expressing itself in favour of the application of the Law of Publication of the 3rd year of the Republic as being still in force by virtue of Instruction N614, Character "Tung," issued in the 4th moon of the 6th year of the Republic, the interested organizations, the Shanghai Publishers' Union, Daily News Union and Book Dealers' Union, filed a petition with the Central Government at Peking\* requesting it to cancel the operation of the law as repugnant to the spirit of the Chinese constitution. The result of this petition could easily be foreseen. The abolition of the Law of Publication was only a question of time,† and the Municipal Council had no other alternative than to bring forward again the project of municipal registration of Chinese printed matter. On April 15th, 1925, the Council submitted for the approval of the Special Ratepayers' Meeting the same text of a Bye-law as in 1924.

The Chinese opposition headed by the Shanghai Chinese Chamber of Commerce flatly declared the new attempt of the Council as *ultra vires* and an encroachment upon China's sovereign rights. A prominent manifesto to that effect was published in all newspapers and on the date of the meeting handbills were freely distributed in the streets and posters exhibited in all show-windows inviting the ratepayers to vote against the Bye-law. It was obvious that the Council's project was highly unpopular with the Chinese and that in the event of its being passed the relations between the Chinese and foreigners, strained already for some time, would become more embittered. Finally the Special Meeting of Ratepayers proved unsuccessful on account of the lack of a quorum and the resolution proposing the measure could not be brought forward.

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\*April 5th, 1925.

†Repealed ten months later on January 29th, 1926.



## CHAPTER VIII.

### WHARFAGE DUES AND THE LICENSING OF NATIVE STOCK AND PRODUCE EXCHANGES, 1845-1925.

The questions regarding the increase of wharfage dues and the licensing of native stock and produce exchanges, which had been raised in the period of 1920-1925, were not directly connected with the political and social events of the same period. They formed quite a separate issue, having only a remote connection with the political situation in the Settlement; but their solution formed an integral part of the Council's policy in adjusting the general problem of administration.

It was a natural desire on the part of the Executive Committee of the Foreign Community to see even the minor deficiencies solved in order to meet the situation, the character of which was obvious to everyone acquainted with the course of political and social events in China.

General Remarks regarding the system of revenues in the Settlement—1845-1898.

The method of assessing Municipal revenues applied in the Settlement from its inauguration and up to 1898 bore the same character of indefiniteness and change as did everything in relation to the earlier administration. There was no definite plan for building up a system of municipal taxation. The matter was left to the beneficial influence of time and to almighty precedent, which, as we know, forms the real basis of all enactments in the Settlement.

In fact, analysing the system of municipal revenue since its earlier application, two principles of taxation are disclosed: that of direct taxation (general municipal rate and land tax), a Western fiscal principle, and the other—the principle of indirect taxation (wharfage dues), a specific Chinese principle.\* The first principle of municipal taxation was not known in China until recent times.† As an instance of the earlier system of taxation applied in the Settlement we may cite from the Municipal Budget for 1854‡:—

*Direct Taxes:*

Chinese rents	...	...	...	...	8	per cent.	\$ 5,400
Foreign „	...	...	...	...	3	„ „	3,000
Land assessment	...	...	...	...	0.5	„ „	2,000

\$10,400

*Indirect Taxes:*

Wharfage dues	...	...	...	...	...	...	\$14,600
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Total	...	...	...	...	...	...	\$25,000
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\*With regard to the Chinese fiscal system, we refer the reader to China's Budgets relating to 1911, the last year of the Tsing Dynasty, and the fifth year of the Chinese Republic (1916-1917). The Budget of 1911 was submitted by the Board of Finance for the Imperial perusal and sanction, and contains quite reliable figures in respect to the State Budget of China can ever be styled "reliable." The Budget of the fifth fiscal year (July 1st, 1916 to June 30th, 1917) was submitted to the Chinese Parliament on February 21st, 1917. The Republican Government was alive to the futility of such a belated estimate, but considered that it might form a model for future Budgets.—China Year Book, 1924, pp. 733-735.

†The first experiment in that direction was made in the Native City of Shanghai by Marshal Sun Chuan-fang, in the latter part of May 1926, when the Municipality of the Shanghai and Woosung area was inaugurated. This innovation aroused much indignation amongst the Chinese residents of Chapel and Nantao, but the military authorities succeeded in putting it into effect.—AUTHOR.

‡"North-China Herald," November 11th, 1854.

The amount derived from the indirect taxes formed the main part of the Municipal income of the Settlement (58 per cent.), and corresponded strictly to the spirit of the general revenue system in China.

On the other hand, the taxation of all goods landed within the limits of the Settlement, although such might not actually have been sold or consumed in Shanghai, pointed to the fact that in principle the construction and maintenance of wharves and jetties as well as other administrative expenditures of the port were not considered solely as obligations to be covered by direct local taxation. Toward defraying the expenses connected with the maintenance of the principal distributing centre of China's foreign trade, the whole country had to contribute its share in the form of an indirect tax, which the consumer of foreign commodities had to pay.

The right to levy taxes "in the form of a rate to be made on the land or buildings, and in the form of wharfage dues" for "making of roads, building public jetties and bridges and keeping them in repair; cleansing, lighting, and draining the Settlement generally, and establishing a watch or police force," was obtained by the Foreign Community of Shanghai by virtue of the respective provisions of the first two Land Regulations promulgated in 1845 and 1854\* and amplified in the subsequent Land Regulations of 1869 and 1898.†

The authority of the Foreign Community acting through its Executive Committee—the Committee of Roads and Jetties and later, the Municipal Council, to levy taxes, had never been disputed by the Chinese residents of the Settlement "who were not allowed to reside therein except with the special permission of the Consul and Taotai" and under "the understanding that they are amenable to all the Municipal Regulations in force in the Settlement."‡

However, in spite of the fact that the Land Regulations of 1845 and 1854 had received the approval of the Ministers for Great Britain, the United States, France and the chief local authority representing the Chinese Government at Shanghai, and the Land Regulations of 1869 had been approved by the Ministers of Great Britain, Germany, France, Russia and the United States, and had been recognized by the Chinese Government and all Treaty Powers, the power of the Municipal Council and the ratepayers to levy and collect taxes and wharfage dues had been disputed by the foreign taxpayers. The local judicial institutions had to uphold this power in a number of cases,§ basing their decisions on the conception that the Municipal Council is a legally constituted body possessing

Wharfage Dues—  
1846-1849.

Right of the  
Executive Com-  
mittee of the  
Foreign Com-  
munity of Shang-  
hai to levy taxes  
—1845-1854—  
1869-1898.

\*Land Regulations, 1845, Art. X; Land Regulations, 1854, Art. XII.

†Land Regulations, 1898, now in force, Art. IX.—See "Shanghai: Its Mixed Court and Council,"—1842-1924, p. 561.

‡July 25th, 1877, see "Shanghai: Its Mixed Court and Council,"—1842-1924, p. 96.

Case of Muirhead and Barrett, before Magistrate Chen and C. T. Gardener, H.B.M.'s Vice-Consul, 1876.

§S. M. C. vs. Fierz and Bachmann before Vloonte Brenier de Montmorand, Consul General for France, 1865; see *ibid* p. 18; S. M. C. vs. W. N. Fogg, before Mr. G. E. Seward, U. S. Consul General, 1875; see *ibid* p. 21; case of S. M. C. in H.B.M.'s Supreme Court for China, 1881; see *ibid* p. 18.

the chief and material, if not all, requisites of self-government.\*

Thus, the question regarding the authority of the Municipal Council as Executive Committee of the Foreign Community in regard to taxation could be taken as definitely settled, whilst the method of collection and the amount of taxation remained open to argument and dispute.

Amount of Wharfage Dues and Method of Collection, 1854-1898

The amount of the wharfage dues levied on imports was fixed in 1854 at one-tenth of one per cent. of the value of the goods passing the Chinese Imperial Customs at Shanghai. These dues were directly collected by the Municipal Council from the foreign importers, and the method of taxation and collection proved to be quite satisfactory, but as far as the taxation of the Chinese merchants was concerned the position was far more complicated. In the year 1854, when the presence of Chinese merchants residing within the Settlements (by sanction of the Consuls) became a noticeable feature,† it was agreed that all such native merchants should pay annually the sum of \$50 each in commutation of wharfage dues, and this arrangement, made for purposes of general convenience, was for some time in force. It did not present particular difficulty for the Municipal Council to collect the amount due, for the number of such merchants and their names could always be ascertained in H.B.M.'s and the United States Consulates, which issued the permits to reside and trade in the Settlement. In 1857, however, the staff of the local executive being somewhat inadequate, H.B.M.'s Consul requested the local Taotai to undertake the collection of these dues from native merchants, the Taotai remitting a lump sum annually as the result of such collection. In proposing such a scheme, the Municipal Council and H.B.M.'s Consul followed the line of the traditional fiscal system in China.‡ The amount thus returned for the year 1858 was Tls. 2,000,§ but as the native trade gradually increased in volume, the commutation was correspondingly advanced to Tls. 4,000, Tls. 6,000, and finally, in 1866, to Tls. 10,000. The money was transmitted to the Municipal Council through H.B.M.'s Consul, but in doing so the Taotai considered this as a kind of courtesy on his part, and in forwarding the money in 1858 tried to dispute the right of the Municipal Council to collect the wharfage dues from the Chinese,|| stating that "the collection of wharfage dues was a matter with which this office had no business. *Mr. Consul Robertson having, however, over and over again consulted with me (the Taotai), and finally engaged me to adopt measures to arrange this matter for him, I subsequently, after considerable trouble, got the Chinese merchants to agree to subscribe yearly \$2,000.*"

\*Sir Edmund Hornby in the case of Will's, 1865 ; see *ibid* p. 17.

†Mun. Annual Report, 1897, p. 119.

‡"The revenue returnable from each administration area in China—town, county, or province—is assessed at a certain fixed sum, which, more or less, is the minimum which must be accounted for and in practice this minimum constitutes the maximum sum which is returned."—H. B. Morse, *The International Relations of the Chinese Empire, 1834-1860* ; p. 27.

§Mr. F. Bunney, H.B.M.'s Offg. Consul, to the Treasurer of the Municipal Council, November 26th, 1858.

||Note of Zee, Intendant of Circuit, to H.B.M.'s Consul, November 26th, 1858.



In 1866 the Taotai tried again to upset the right of the land-renters, as laid down in the Land Regulations of 1854, to collect wharfage dues from *all merchants residing in the Settlements*.<sup>\*</sup> He refused not only to authorize such a levy, but in fact had distinctly forbidden any levy upon Chinese merchants, stating that he paid an annual sum "in commutation." It is to be noted that Tls. 28,000 was the amount estimated as payable by the Chinese for that year. In spite of the apparent incorrectness of the Taotai's statement, or shall we say, his attempt to establish precedent, it was not until 1870 that the Municipal Council again made an attempt to ascertain its exact position and to increase the amount of wharfage dues collected from the Chinese. On this occasion it failed to establish the privilege owing to the complete indifference displayed in the matter by the Consular Body. Nevertheless, the Land Regulations of 1869 had explicitly stipulated that the Meeting of Ratepayers was competent to impose "rates and taxes in the form of dues on all goods passed through the *Chinese Custom House* by

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<sup>\*</sup>At a Special Meeting of Landrenters held at the British Consulate, on the 30th, 1865, it was resolved:—

"That this meeting approves of the system of levying a town due instead of wharfage dues, and authorizes the Municipal Council to collect a due in conformity with the report of their Finance Committee, viz., at the rate of one-tenth per cent. on the value of all articles entered at the Custom House for import, export and re-export."

In accordance with this resolution the Council attempted to formulate a scheme for the collection of these town dues through the Customs; it had been found impossible, however, to levy the tax; first, because it appeared not to be legally provided for in the existing Land Regulations; and secondly, because the Taotai did not consider himself authorized to employ the machinery of the Custom House in collecting such a tax without special authority from his superiors. Meanwhile the wharfage dues, which had up to that time formed one of the chief sources of income to the Council, exhibited a most alarming decline, owing to the rapid extension of the system of warehousing goods at private wharves, instead of landing cargoes at the public jetties. Thus instead of a sum of Tls. 55,000 expected from this source during 1865, not more than Tls. 25,000 was realised. As the house and land taxes also showed a serious decrease due to temporary causes, the financial position of the Municipality was in a critical state and the Council was of the opinion that proper administration of public interests was doubtful unless a material increase in the revenue was provided by the collection of the proposed town dues.

In this dilemma the Council framed the following amendment to Article X of the Land Regulations and solicited the assistance and co-operation of the various Consuls in making it binding upon all residents of Shanghai. After detailed discussions the Consuls agreed to the proposed measure, and the matter was referred to the Ministers at Peking where it remained in abeyance until 1869, when approval was definitely withheld by the Ministers.

Proposed Amendment to Art. X of the Land Regulations, 1854.

"Whereas owing to the multiplication of private wharves the levy of wharfage dues has ceased to affect large quantities of goods imported into and exported from within the limits set apart by authority for the residence of foreigners and carrying on foreign trade, which goods and property do nevertheless derive advantage from the watch and other establishments created under Article X of the Land Regulations for the peace, good order and government of the Foreign Settlement of Shanghai, and whereas it is of urgent necessity for the maintenance of such establishment that funds should be collected for carrying out the several objects referred to in the aforesaid Article X; it is hereby provided that in lieu of the wharfage dues heretofore levied in terms of the aforesaid Article X., such dues as may be found necessary and have been sanctioned by the landrenters in meeting assembled, shall be declared levied according to the provisions of the said Land Regulations on all goods landed, shipped or transhipped through the Chinese Custom House or at any place within the said limits, such dues to be collected either through the medium of the Customs Department or by officers specially appointed for that purpose, and the said Committee or its officers or the officers of the Customs acting on its behalf shall have power to apply to detain all goods landed or shipped as aforesaid until the dues claimed thereon be paid, and the said Committee shall be empowered to apply to the Consular or other Courts under whose jurisdiction the owners, shippers or consignees of any such goods may be, for authority to sell such portion of the same so detained as aforesaid, as may suffice to cover the amount due."

—Mun. Council's Annual Report, 1866.

*any person or persons resident within the said limits, or landed, shipped or transhipped at any place within the said limits.\**

The position was apparently anomalous. The amount of wharfage dues collected from the foreign merchants grew with the increase in the volume of the commercial turn-over, while the Chinese merchants continued to pay only Tls. 10,000, though their share in the trade, from 1854, assumed very considerable dimensions.

The ratio between the two sources of revenue for defraying expenses connected with the construction and upkeep of landing facilities in the port showed a marked tendency to shift the entire burden to the foreign mercantile community exclusively, though the Chinese merchants as well as the whole country benefited to an equal degree by the same facilities.

In 1875, when a new attempt was made to have the Taotai's commutation raised, the growth of native trade was apparent from the fact that since 1866 (the year when the "commutation" was fixed at Tls. 10,000) the number of vessels flying the Chinese flag had increased on the Port Shipping Register from 135 to 241, and the tonnage represented rose from 8,000 to 62,000 tons.

On August 20th, 1875, Mr. W. H. Medhurst, H.B.M.'s Consul, and Mr. G. F. Seward, U.S. Consul, acting on behalf of the Consular Body and the Municipal Council, remonstrated with the Taotai, Feng. They pointed out that foreigners residing or doing business within the limits of the English and American Settlements paid wharfage dues upon all merchandise landed, shipped or transhipped by them at the rate of one-tenth of one per cent., while the Chinese similarly situated paid no dues on wharfage, their obligations in this particular being supposed to be met by the payment of Tls. 10,000 which the Taotai gave annually as a commutation on their behalf. The foreigners had also attempted to evade the dues payable by them by setting up the plea that the goods in respect of which a claim for duty had been made had been brought in by Chinese and were therefore free under the commutation; or, by entering their goods in Chinese names.

In view of this Messrs. W. H. Medhurst and G. F. Seward made a proposition which corresponded to the spirit of Land Regulation IX, 1869, viz: (1), That the Council would collect dues on the whole import and export trade to and from foreign countries; and, (2) That the Taotai's Commutation should be held to cover the domestic trade, that is to say: (a) Native imports from other Chinese ports; (b) Native exports to other Chinese ports, and (c) Native re-exports to other Chinese ports. However, should the Chinese engage in foreign trade, the Council would collect from them and place the receipts in the Municipal Treasury; should the foreigners engage in domestic trade, the Council would collect from them equally, as in the case of foreign trade, but would place the receipts so taken to the credit of the Taotai's commutation.†

In spite of the obvious fairness of the proposition the Taotai failed to give a reply to the proposal in writing and to issue the

\*Land Regulations 1869, Regulation IX.

†Messrs. W. H. Medhurst and G. F. Seward to Taotai Feng, August 20th, 1875.

requisite Notifications, though upon being again and again approached on the subject he expressed in principle his consent to the measure tending to straighten out the inequality of the financial burden borne by foreigners and Chinese in respect to the maintenance of the efficiency of the Port of Shanghai.

The matter remained in abeyance until 1897, when the Council, Project of 1897. after careful consideration, concluded that the system under which wharfage dues were collected was eminently unsatisfactory, for two reasons. First, because under this system more and more persons evaded their just share of taxation; and, secondly, because the existing Taotai's commutation could by no means be held to represent the amount of native dues to which the Municipality was properly entitled.

Indeed, in 1896, 1,093 vessels (totalling 890,000 tons) under the Chinese flag, i.e. representing domestic trade only, entered the port. Based on these figures, which represented only a part of the native trade done by the Chinese merchants, the sum of the annual Taotai's commutation was ridiculously small. It continued to be assessed at Tls. 10,000 forming only 1.56 per cent. of the total Municipal revenues against the original 9 per cent. in 1854 and 1858.

The feature of this absolute unwillingness on the part of the Chinese mercantile community to contribute its share to the Municipal expenditure in the period of 1854-1897 will become particularly evident if we compare the figures of various items of Municipal revenue for the period of 30 years—from 1866 to 1896.

*Table of Wharfage Dues in relation to the Total Municipal Revenue 1866-1898, in Quinquennial periods :*

Years	Dues paid by Foreigners.	Dues paid by Chinese.	Total Municipal Revenue.	Foreign contribution.	Chinese contribution.
1866	Tls. 40,000.00	Tls. 10,220.00	Tls. 192,108.00	20.8%	5.3%
1871	„ 99,684.93	„ 10,454.50	„ 301,987.74	32.4	3.4
1876	„ 86,752.00	„ 10,475.00	„ 229,435.00	37.8	4.5
1881	no information	„ 10,302.25	„ 262,863.37		3.9
1886	„ 53,017.87	„ 10,258.50	„ 387,316.93	13.6	2.6
1891	„ 51,652.37	„ 10,167.50	„ 462,138.09	11.1	2.1
1896	„ 55,000.00	„ 10,300.00	„ 530,094.90	10.3	1.9

Indeed, the entire burden of taxation for the maintenance of the greatest port of China was borne by the foreign community, though it was originally intended to extend this burden to the whole *country* by indirect taxation of commodities passing the port of Shanghai.

The propositions of the Council in December of 1897 were very moderate, consisting of the following three points :

(1). That the Taotai's commutation, by virtue of which Chinese merchants shall continue to be exempt from wharfage dues on account of *native* imports, exports and re-exports, be increased to Tls. 30,000 per annum.

(2). That the Taotai be requested to publicly notify that the commutation of wharfage dues shall in future be held to refer to the "domestic trade" only, i.e. that it shall not cover any exports to, or imports from, foreign countries, or, as an alternative proposal :—

(3). That the entire collection of wharfage dues on all classes of trade be undertaken by the Imperial Maritime Customs, and that from



the proceeds thereof one-half of the amount realized on the "domestic trade" dues be payable to the Taotai as cost of collection, the remainder, i.e. all the dues on foreign trade together with one-half of the dues on native trade, being remitted quarterly to the Council.\*

After seven months, the Council received through the Senior Consul† a reply from the Taotai, July 19th, 1898, in which the latter granted his consent to the collection of wharfage dues by the Imperial Maritime Customs, and stated that if the Customs were to collect the dues, the amount would be much larger than heretofore.

According to the estimates made by the Customs the yearly amount realized on the foreign trade would reach the sum of at least Tls. 70,000, whilst that levied on the coast trade approximately Tls. 30,000, of which half should go to the Council. The cost of collection was estimated at Tls. 5,000 to be borne equally by the Taotai and the Council.

Upon having been approached on the subject, the Inspector-General of Customs sanctioned the proposal, but recommended that simultaneous arrangements should be made for the collection of wharfage dues in the French Concession and that both Councils should enter into negotiations about the matter and act jointly throughout.

The meeting between representatives of the International and French Municipal Councils took place on December 23rd, 1898, and it was then proposed and agreed, subject to subsequent confirmation by the Councils, that of the total sum handed over by the Customs authorities, after deduction of the Taotai's share of native trade dues and cost of collections, 25 per cent. of the balance should be handed over to the French Council as its dues.

Agreement with  
the Imperial Customs  
of 1899.

The ratepayers' meeting in the following year, 1899, approved this arrangement and authorized the Council to sign a tripartite agreement with the local Imperial Maritime Customs regarding the collection of wharfage dues, which was accordingly done on March 20th, 1899.‡ This agreement forms the basis of the present system of collection of wharfage dues, and since its first day of operation has proved more than satisfactory.§ In fact, the Council's proportion thus collected for the June quarter 1899, after deduction of collection expenses and the Taotai's half on domestic trade dues, reached the amount of Tls. 32,469.31, making a total for 1899 of Tls. 135,762.65, as compared with Tls. 69,900.75 for the year 1898.

The operation of the original agreement of 1899 has been continued from year to year, and the amount collected shows a constant increase corresponding to the increase of the trade of the port, as the rate of dues levied on all commodities passing through the Maritime Customs has remained the same.||

However, in the course of the subsequent 20 years it became apparent that though the figures showed a constant increase, the

\*Mun. Council to the Senior Consul, December 21st, 1897.

†Mun. Council to the Council of the French Concession, August 5th, 1898; French Council to the Mun. Council, October 5th, and 17th, 1898.

‡For the text of the agreement see Appendix.

§Mun. Council to the Commissioner of Customs, July 10th, 1899.

||Art. IX. Land Regulations of 1898. See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 561.

sum of wharfage dues in proportion to the total amount of Municipal income, and the growth of other Municipal taxes, has been utterly disproportionate.

The following table for the last 20 years gives an idea regarding the Municipal taxation in the Settlement, and the proportion of the wharfage dues to the total amount of Municipal revenue in Shanghai taels.

Years	Indirect taxation		Direct Taxation		
	Wharfage dues	License Fees	Land Tax	General Tax	
1901	140,170.17	263,086.69	218,749.80	444,613.16	
1906	203,741.94	398,477.36	400,457.85	829,940.49	
1911	180,778.22	455,451.00	690,999.51	502,097.23	
1916	207,000.11	651,569.59	682,177.23	601,878.26	
1921	374,785.11	721,022.33	1,326,871.79	2,498,595.43	
1925	464,627.49	1,131,189.00	2,117,069.27	3,985,921.41	
Total Municipal Revenue		Indirect Taxation	Direct Taxation	Wharfage Dues	Various Revenues
Tls. 1,097,719.71		36.7%	60.4%	12.7%	2.9%
1,866,398.01		32.3	65.9	10.9	1.8
2,589,631.85		24.1	46.7	6.9	29.8
3,333,150.76		25.6	38.5	6.2	35.9
5,960,627.71		18.3	64.1	6.2	17.6
9,619,976.53		16.5	63.4	4.8	20.1

Again the main burden of maintaining the principal distributing centre of Chinese Foreign trade had been gradually shifted to the local Chinese and foreign communities under direct taxation. The pressure of this taxation in the period of 1918-1920 attained such a height that it was practically impossible to increase it further. The general municipal rate was raised from 12 to 14 per cent. which is undoubtedly a very heavy tax in view of the generally low taxation in China.

The amount of taxation in 1918-1920.

Meanwhile, the financial needs of the Settlement and the necessity for further improvements required additional funds.

The solution of the problem rested either in increasing existing taxation, or in the increase of the profits derived from Municipal-owned enterprises. The latter remedy required new investments before any considerable increase of revenue could be expected. Thus, the only possible way to strengthen the Municipal revenue was to increase the indirect taxation, or wharfage dues, taking in view the possibility of a considerable rise in the Customs tariff in connection with the mooted customs autonomy.

Under Article IX of the Land Regulations, the Council was authorized to collect dues "on all goods passed through the Chinese Customs House . . . provided the said . . . dues shall not exceed the amount of one-tenth of one per cent. of the value of the goods . . ." On reference to the Tariff, it will be seen that the only classes of goods on which the maximum rate was not collected, were *silk, tea, treasure* and such goods as paid Customs duty at a rate lower than 5 per cent.\* In 1919 the Council proposed to raise the dues on these goods to the maximum amount and in connexion with this addressed the French Municipal Council, the

\*Mun. Council to French Mun. Council, July 28th, 1919.

Shanghai General Chamber of Commerce and the Commissioner of Customs with a view to securing their consent and advice on the proposed measure. In reply to the Council's communication the French Municipal Council expressed its entire consent to the proposed increase of the wharfage dues,\* while the General Chamber of Commerce referred the matter to the consideration of the interested commercial bodies.

As far as the Commissioner of Customs was concerned, the latter informed the Council that the proposed increase of wharfage dues in accordance with the Council's proposal would scarcely raise the Municipal revenues. The effect of the unification of rates on the total wharfage dues collection would be negligible—one year would show a slight increase, another a decrease as compared with the present collection, depending on the relative quantities of the commodities landed and shipped. However, the Commissioner expressed his consent to the proposed measure as simplifying the method of collection of the dues.†

On the other hand, the interested foreign commercial bodies, the Shanghai Foreign Exchange Bankers' Association, Foreign Silk Association and Chinese Tea Association, forwarded through the General Chamber of Commerce their respective answers, in which the Shanghai Foreign Exchange Bankers' Association stated that the banks were of opinion that any increased tax on bullion would only tend to create a further charge on the currency of China and the inland exchanges. On these grounds the members of the Association were of the unanimous opinion that a strong protest must be made against the proposed increase in the wharfage dues at Shanghai.‡

The Foreign Silk Association was also against the increase of dues, stating that while eventually exporters would pay the increase, this was a point which from previous experience the association had found very difficult to impress on the Chinese dealers, who would have to pay such an increase first. The majority of silk dealers lost money and to enforce such an increase in a bad season would cause general dissatisfaction and might interfere with business.§

The China Tea Association also declared against the advisability of increasing the wharfage dues on tea. It stated that, although the general opinion was that the tax was so small that it would be of little importance if there was a slight increase, yet, as the tea-trade was suffering from the lack of a Russian demand, causing exports to fall considerably, any move on the part of the foreign community to increase the burden of taxation on tea would create a bad impression on the Chinese authorities who had just removed the export duty on tea for two years and reduced the *likin* by a half.||

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\*French Mun. Council to the Mun. Council, August 30th, 1919.

†Commissioner of Customs to the Mun. Council, November 4th, 1919.

‡Shanghai Foreign Exchange Bankers' Association to the Shanghai General Chamber of Commerce, October 29th, 1919.

§Foreign Silk Association to the Shanghai General Chamber of Commerce, November 5th, 1919.

||China Tea Association to Shanghai General Chamber of Commerce, October 30th, 1919.



The matter was made the subject of consideration by the Finance Committee of the Council on January 22nd, 1920, and the views expressed at the meeting were wholly endorsed by the Council. The members of the Committee agreed in principle to the suggestion of the Commissioner of Customs, but recalled that the object in addressing the French Council and the General Chamber of Commerce was to secure a larger revenue from wharfage dues, whereas consideration of the statistics in regard to the dues collected during the last five years, which the Commissioner forwarded to the Council showed that the collection on the basis which he proposed would have meant a net decrease in the dues of Hk. Tls. 8,319. Accordingly, subject to ascertainment of the views of the French Council, the members of the Finance Committee recommended the provisional approval of the Commissioner's proposals in principle, but pointing out that the increased cost of administration of the Settlement necessitated collection of 3 instead of 2 per cent. of the duty paid, as proposed by the Commissioner, but so that such percentage should not in any case exceed one-tenth of one per cent. of the value of the goods concerned. With regard to bullion it seemed to members of the Committee that an increase in the wharfage dues from 30 to 45 cents per Tls. 1,000, which was the amount levied for the Conservancy tax, would not appreciably affect the currency of the country or the inland exchanges.

The French Council expressed its entire approval of the suggested scheme and the matter was proposed to be submitted to the Ratepayers' Annual Meeting in April 1920.\*

However the proposed increase in wharfage dues could not be put into effect so easily. It necessitated an organic amendment of the Land Regulations, which had to be sanctioned not only by the ratepayers in special meeting assembled, but by all Treaty Powers and the Supreme Government of China.

In fact it appeared that should the project of the Council be put into effect on goods paying an *ad valorem* Customs duty of 5 per cent. on their value, 3 per cent. of the 5 per cent. Customs duty would exceed the amount of one-tenth of one per cent. stipulated in the Land Regulations as the maximum of wharfage dues collected in favour of the Settlement.† It was the opinion of the Customs authorities that in accepting the scheme the Council would complicate the collection of wharfage dues to such an extent that the latter would find it impossible to lay the scheme before the Chinese authorities and endeavour to enlist their support for it.

However, having in view the pressing necessity of increasing the revenue of the Settlement, the Council resolved to resort to the amendment of Land Regulation IX, notwithstanding the complicated procedure which this involved. It was suggested to move a resolution providing that wharfage dues should in no case exceed "3 per cent. of the Customs duty on the goods so passed, landed, shipped or transhipped," instead of "the amount of one-tenth of

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\*Mun. Council to the Commissioner of Customs, February 28th, 1920.

†Commissioner to the Mun. Council, March 5th, 1920.

one per cent. on the value of goods so passed, landed, shipped or transhipped." The Council expected that the proposed amendment would not meet any particular opposition, while the increase in wharfage dues would already in the first year result in a very considerable increase of Municipal income. According to the Council's estimate, had the scheme been in operation in 1919, the Council's receipts from the dues for that year would have been Sh. Tls. 297,334, as compared with Sh. Tls. 268,835 obtained under the old system of taxation.

As a matter of fact, the Shanghai Foreign Exchange Bankers' Association and the China Tea Association withdrew their objections, while the Foreign Silk Association in agreeing to the proposed increase, pointed out, as a matter of principle, that the increase of dues of any kind on the export of raw silk was strongly to be deprecated as an act calculated to place Chinese silk in a less advantageous position than Japanese silk, which did not bear any export dues at all.

A slight misunderstanding with regard to the collection of wharfage dues on treasure and tea, temporarily exempt from any Customs duty, and the expression "transhipped," was cleared up by the Council as follows:—

"In deciding upon the amendment in question, the Council had in mind that all goods that are from time to time duty-free, would likewise be exempt from the levy of wharfage dues, and that although the word "transhipped" in the present regulation is retained, the Council has not under consideration any change in its attitude towards transhipment cargo,

which were also hitherto exempt from Customs duty.

The same attitude was assumed by the Council regarding the extension of time for transhipment of goods landed in Shanghai and bonded to a second port, which were treated as transhipment cargo. The Council was of the opinion, that "in the best interests of Shanghai, it is in the highest degree undesirable that measures should be adopted, having a tendency to render the port expensive for handling of cargo."

The Council also expressed its consent that rice destined for famine relief should be exempt from wharfage dues provided that the proposed amendment of Land Regulation IX be approved by the ratepayers and received the sanction of the authorities concerned. This caused a further exchange of correspondence between the Council, the French Council and the Commissioner of Customs and resulted finally in the settlement of the issue without the *proviso* regarding the acceptance of the proposed resolution by the ratepayers, which had aroused a certain reluctance on the part of the Inspector-General to convey the Municipal Council's proposal to the Chinese Government.

The idea of the Council was endorsed by the French Municipal Council, and on March 17th, 1921 the Council gave notice of its intention to propose a resolution at a Special Meeting of Ratepayers to be convened for the same date as the Annual Meeting, in the terms set forth hereunder:

"*Resolution IV.*—And it shall also be competent to the said meeting or a majority thereof as aforesaid, to impose other rates and taxes in the form of dues on all goods passed through the Chinese Custom House

by any person or persons resident within the said limits, or landed shipped or transhipped at any place within the said limits ; provided the said rates or taxes levied in the form of dues shall in no case exceed *three per cent. of the Customs duty on the goods so passed, landed, shipped or transhipped.*"

However, in spite of all expectations and belief that the proposed measure would be passed, the Council was not even in a position to submit it to the ratepayers. The special meeting failed owing to the absence of the number of ratepayers required to form a quorum.

The projected amendment of Land Regulation IX aroused loud protest on the part of the Chinese General Chamber of Commerce and the Commissioner for Foreign Affairs. The latter lodged a strong protest with the Consular Body, pointing out that the Chinese mercantile community was bitterly opposed to any increase of wharfage dues owing to the general depression of business.

In March 1922, the Council announced again its intention to put forward the resolution amending Land Regulation IX. The publication of the notice was the signal for launching an extensive campaign of propaganda by the Chinese merchants, and on March 29th the Commissioner for Foreign Affairs forwarded to the Senior Consul a protest of the Chinese General Chamber of Commerce and expressed the hope that the Consular Body would exercise its influence to prevent the Council from bringing forward the matter, which met with general disapproval on the part of the Chinese community.

The letter was communicated to the Municipal Council, while the Consular Body informed the Commissioner that it had "no power to control what matters shall and what shall not be brought before the Ratepayers' Meeting for discussion."

As far as the resolution regarding the proposed increase in Wharfage Dues was concerned, the Consular Body pointed out that there was no question of ignoring the Chinese authorities. It was perfectly true that the Land Regulations could not be altered without the consent of the Consular Body and the Chinese authorities but it was useless for the Municipal Council to bring up these matters until they had satisfied themselves that the ratepayers approved of the increase. The Chinese General Chamber of Commerce should have realized that the efficient administration of the Settlement was more expensive every year with the growth of the population, and that if the Council could not obtain the necessary powers to raise the Wharfage dues, which were at that time absurdly low, the funds expected from this source would have to be found by other means.

In its turn, the Council, having learnt that the Chinese General Chamber of Commerce was assuming an attitude of opposition to the resolution, and thinking that such opposition might be due to a misunderstanding, addressed the Chamber some days prior to the receipt of the Commissioner's letter, and invited the Chamber to depute one or more members of the Committee to attend on Mr. N. O. Liddell, Secretary and Commissioner-General, who was prepared to give such explanation as might be desired upon any particular point not clear to the Committee and thus dispel any misunderstandings that might exist.



It was not to be expected, however, that the opposition on the part of the Chinese merchants could be overcome by any means of persuasion or logic. From the preceding chapters we know that the real reason for any opposition on the part of the Chinese was the absence of Chinese representation on the Municipal Council:

"We have properties and real estate in the Settlement," stated 30 Chinese commercial associations in their letter to the Municipal Council, of April 11th, 1924, "and the majority of the Municipal funds in the form of taxes and dues are paid by us, yet we have no voice in the Ratepayers' Meeting. The Council only allows five persons on the Board of Chinese Advisors to be the medium acting between the Municipal Council and the Chinese ratepayers and residents. For this reason we submit to you this letter voicing our public sentiment. Now we demand that the five Chinese advisors will at once raise the objection to the Council to have the above-mentioned resolutions withdrawn or cancelled."

The latter reason was the only serious one which animated the Chinese community in assuming an irreconcilable attitude towards any measure of the Council without regard to its nature. In fact, the arguments of the Chinese commercial bodies against the increase in wharfage dues set forth in the above-cited letter displayed more pretention than real criticism.

The fate of the reform was closely connected with the fate of the legislative attempts of the Municipal Council in the period of 1920-1925. It was defeated by the failure to raise the necessary quorum of ratepayers at a series of special meetings convened in 1921, 1922, 1924 and 1925, together with the proposed resolutions concerning the registration of printed matter, child labour and licensing of Chinese stock and produce exchanges.

Licensing of  
Chinese Produce  
and Stock Ex-  
changes.

The latter, as advanced by the Council, was more of a police measure than of a fiscal one.\* The few thousands derived from the licensing of the native exchanges could scarcely be taken into consideration when dealing with the millions forming the annual budget of the Shanghai Municipality, while the effect of the measure in regard to the preservation of the welfare of the native community was very great. In fact speculation in the Settlement during 1921 reached its climax:—

"Within a surprisingly short space of time, in this and the French Settlement, exchanges were being organized in various quarters," stated the Commissioner of Police in his report, 1921.† "The Chinese Ministry of Agriculture and Commerce, becoming aware of what was going on, caused a notification to be issued requiring all these establishments to be registered with the Ministry at Peking. The situation gave rise to many anomalies, one of which was that officials, ex-officials and other people who had never in their lives been engaged in trade of any description associated themselves with exchanges connected with goods and products of which they knew nothing. The sale of promoters' shares was reported generally long before the scrip was available and before the exchange had been finally formed. Instances were reported wherein a number of people who had bought suffered considerable loss in consequence of a public announcement that the application of an exchange for permission to register had not succeeded. The speculation

\*According to the estimate given in the Municipal Annual Report for 1921, the licence fee to be levied in the native Stock and Produce Exchanges in case of the amendment of Bye-law XXXIV was fixed at the rate from Tls. 45 to Tls. 200 per quarter according to the class of the exchange.—Municipal Report, 1921, p. 92C.

†Mun. Council's Annual Report 1921, p. 62A.

mania took deep root and persons who, in their saner moments, would never have consented to part with their savings unless it was for some safe and profitable investment, were attracted by the glamour of the large fortunes which were said to be made. They speculated and in so doing began 'to lose all sense of risk,' as the Native Bankers' Guild in Nantao put it, in a circular issued to its member banks. Fortunes did appear, according to report, to have been made, but mostly by certain people connected in some way with the formation of the establishments. On the other hand, not a few families were ruined, and cases of suicide and attempted suicide occurred. The situation presented a strong temptation to employees in a position of trust to make their fortunes by what appeared to them to be a few simple transactions with the temporary loan of their employers' money. Numbers of employees absconded from Shanghai after having embezzled sums of money, more or less, large, which they had lost in speculation. A rough estimate of the total amount of money thus reported places the figure well over \$1,000,000. In addition, men who had hitherto been respected for their integrity and regarded as being strong financially severed connexion with their acquaintances and disappeared from Shanghai after incurring liabilities which they were unable to meet. The Chinese Bankers' Association realising, as employers, the seriousness of the situation, held a meeting on September 3rd, 1921, the outcome of which was the issuing of a circular notice to its members requesting them to prohibit their employees from dabbling in exchanges or having anything to do with brokers connected therewith. There is at present no machinery for checking these exchanges and it is therefore imperative that prompt action should be taken to bring them under proper control by licensing under conditions as stringent as those already imposed on exchanges in the French Settlement. Unless something of this nature was done there are grounds for believing that the exchanges which related to provisions and food products may, at sometime or other, bring about a crisis in the food supply of the population of the Settlements with all its accompanying dangers."

In order to form an idea of the extent of the danger to the community's welfare, mentioned in the above report of the Commissioner of Police, it is essential to refer to the amount of capital engaged in Exchanges. According to the estimate of a well-informed Chinese business man\* there were at least 35 native exchanges functioning in Shanghai in November, 1921, each with an average capital of five million dollars, a quarter of which had been paid up. The shares of these exchanges were sold from three to ten times above their nominal value. Roughly and conservatively it may be represented as follows :

Total capital invested	...	...	...	...	...	\$175,000,000
Total capital paid up	...	...	...	...	...	\$ 45,000,000
Total marketable value in November 1921	...	...	...	...	...	\$180,000,000

It seemed that the situation was not fully realised by a very large number of Chinese merchants, in whose opinion the establishment of "these exchanges should promote business prosperity," and the number of all kinds of native exchanges in Shanghai reached at the end of 1921 the solid figure of 140.

However, the seriousness of the position could not escape even the lenient attention of the Peking Government. Besides requiring the registration of the exchanges with the Ministry of Agriculture and Commerce, the latter telegraphed to the Commissioner for Foreign Affairs asking him to discuss the matter with

\*"North-China Herald," November 26th, 1921.

†Views expressed at the meeting of the executive and staffs of the Shanghai Produce Stock Exchange, the Chinese Cotton Cloth Exchange, the Chinese Cotton

the Consular Body with a view to securing their co-operation in controlling "exchanges" in the Settlement.\* It was obvious that without the co-operation of the foreign authorities the Chinese Government would never be able to exercise actual control over their function except by refusing to register them.† However, even in the latter event the execution of the Ministry's orders rested with the authorities of the Settlement and the French Concession, which exercised full control within their respective boundaries, i.e., with the Municipal Council and the French Consul-General, as the official head and executive of the French Concession.

Regulations for  
the control of  
Native Stock and  
Produce Ex-  
changes in the  
French Conces-  
sion, February  
1922.

In February 1922, the French Consul-General promulgated a code of regulations for the control of these organizations. The new rules required that all shares, shareholders and transfers should be registered with the French Consulate-General. The promoters of an exchange had to subscribe at least one-quarter of the number of shares, which were to be deposited with the French Mixed Court and not be transferable until a guarantee fund amounting to at least one-fifth of the capital had been created. The operation of shares of an Exchange on its own premises was strictly prohibited. Neither the exchange nor any broker in its service were permitted to be a party to forward contracts on their own account. Each exchange was required to keep a record of all transactions, to be entered up daily, showing the nature of the transaction, its amount, names of the buyer or seller, the name of the broker and date of delivery. Brokers had to keep a similar register, whilst each exchange had to furnish a monthly statement showing the total amount of its transactions.

The new regulations were to be applied under the supervision of a French-Chinese Committee sitting at the French Consulate. This Committee had to exercise general control and in particular to give attention to the financial standing of the exchanges and their brokers. All brokers and members of the exchanges who might combine for the purpose of "cornering" a market, or who attempted operations designed to create market values above or below the normal as determined by ordinary free business were liable to prosecution.

A tax of 6 per cent. was levied on all exchange transactions and on brokerage, to be collected through the exchange, which was held responsible for the whole amount due. Payment of the amount due had to be accompanied by a written statement from a substantial manager, who was held responsible if the return was found to be inaccurate. Penalties were provided for any breach of these regulations. An offender might be cautioned or fined

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Exchange, the Woo Hai Stock Exchange, the Shanghai Silk and Cocoon Exchange, and the Chinese Yarn Exchange held on July 25th, 1921.—"North-China Herald," July 30th, 1921.

\* "North-China Herald," August 6th, 1921.

† On August 23rd, 1921, the Ministry of Agriculture and Commerce issued an official announcement prohibiting the following trusts and exchanges from further operation in Shanghai, on the ground that they had not been registered at the Ministry. —The Chung Hwa Native Produce Exchange (Int. Settlement); the Pacific Merchants and Land Exchange (Int. Settlement); the Huashang Currency Exchange (French Concession); the Huan Chien Day and Night Exchange (French Concession); the Huashang Silk Exchange (Chinese City) and the Chuang Hwa Bean and Grain Exchange (French Concession).



from \$20 to \$10,000 and the authorities were given power to double the latter penalty in certain eventualities. Another provision for defaulters was that an exchange could be closed and its licence withdrawn, whilst its brokers could be prohibited from trading at any other exchange in the French Concession.

The revenue derived from the 6 per cent. tax was to be distributed amongst charitable and educational institutions in the French Concession, the fund to be administered by a joint committee composed of representatives of the exchanges, the French Municipal Council and the Consul-General for France.

The effect of these regulations was striking. The evil was checked at its source and out of more than a score of the various exchanges existing in the French Concession, only three, the solidity of which did not arouse any doubt, were left at the beginning of 1922. There is no need to add that the action of the French authorities aroused no protest on the part of the Chinese, as in the case of the regulations concerning the native press in the French Concession.

Of course, the efforts of the Municipal Council of the International Settlement to check the evil could not go so far. Its authority was limited not only by the constitution of the self-government of the foreign community, but also by the liberal tendencies of the community in contra-distinction to the somewhat autocratic method of the Consul-General for France in controlling the affairs of the French Concession. The Council framed a modest measure against unrestrained speculation and gambling on the part of the community, amending the wording of Bye-law XXXIV by inserting the words "stock and produce exchange" after the word "pawnshop." This had to be submitted to the ratepayers at Special Meetings in 1922, 1924 and 1925. Such a licensing of exchanges did not provide any particular taxation, restrictions or penalties other than those set forth in Bye-law XXXIV for persons offending against or infringing any provision of it, i.e., a fine not exceeding \$100 and a further fine for every 24 hours' continuance of such offence and infringement, not exceeding \$25; or any such other penalty as should be prescribed by the law to which offenders should be amenable.

The licence conditions as projected by the Council were also widely divergent from the terms of the regulations introduced by the French authorities. They amounted practically to mere registration of the names of promoters and brokers, with their addresses, capital of exchanges and a monthly record of transactions and tended in no way to interfere with the real business of respectable exchanges. However, this modest project met with the same strenuous opposition on the part of the Chinese community as did the Council's proposal to keep a check on scurrilous and seditious publications on the part of the native press or to protect native children against impudent exploitation, and was quashed by the indifference of the Foreign ratepayers, whose meetings during recent years have been, as we know, conspicuous failures owing to the absence of a quorum.

Municipal Council's efforts to regulate the operation of the native Stock and Produce Exchanges, 1922-1925.

## CHAPTER IX.

### THE PROBLEM OF CHILD LABOUR, 1922-1925.

General.

The legislative and administrative activity of the Municipal Council could not be solely confined to measures of a strictly protectionary or, better to say, precautionary and fiscal nature. It necessitated a certain extension beyond these limits. It necessitated some steps being taken to dispose of the onus surrounding the foreign community in China generally and Shanghai in particular, which was created by able Chinese agitation in Europe and America. It was also essential to meet half way the just demands of the Chinese working classes, who since 1918 had been, as we know, in a state of constant fermentation. Perhaps the first consideration was more important than anything else, as it prevented the governments of the interested Powers from defending the present *status quo* of foreigners in China owing to the opposition of the powerful labour unions in Europe to any firm action with regard to China.

It was clear that the Municipal Council's power in bringing about any amelioration of the economical or social welfare of the working classes even within the Settlements was very limited. It was limited by the constitution of the Foreign Settlement and the general psychology prevalent during the last twenty years in China. Any serious effort on the part of the Municipal Council to solve these problems could easily result in a series of new complications. However, the necessity of an attempt being made to that effect was apparent. The Council was, as no other body in China, in possession of the requisite mental and financial resources to give the lead in any social or economic reform.

In fact, the conditions of labour since the beginning of industrial growth in Shanghai had been very unsatisfactory, and it was not at all surprising that seditious propaganda of every description found ready acceptance by the masses of workmen in the Settlement. It may be said that, except in a few other lesser industrial centres of China, the conditions of labour in Shanghai, except possibly in the Settlement, where the employer is compelled to pay more attention to the workers' comfort, were probably worse than in other parts of the country, where native industry was still in a primitive state and where the workmen had not yet severed their connection with the rural population and formed the class of proletarians.

Furthermore, if the proletariat could be found anywhere in China as a separate class, it was to be found in Shanghai, and if any movement relating to a reform of the conditions of labour should be started in China, it was also in Shanghai.

The Shanghai Municipal Council was the first body in China to take the lead in that respect, and its attention was in the first place drawn to the awful conditions of child labour in the Settlement.

"At the last meeting of the Council," wrote Mr. N. O. Liddell, Secretary and Commissioner General of the Municipal Council, to Mr. E. F. Mackay, Chairman of the Employers' Federation at Shanghai,\*

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\*November 23rd, 1922.

" the Chairman informed members of a visit which he had received from Miss A. Harrison, of the Y.W.C.A., who is keenly interested in the subject of child labour in factories and mills ; and that, in the course of a lengthy interview, he had pointed out to her some of the difficulties with which this question is beset, due in a large measure to the fact that until restrictions are placed on child labour outside the Settlement, it is hopeless to attempt to place restrictions within the Settlement, or to obtain the requisite authority to do so.

" At the same time the Chairman expressed the view that *the Council should give a lead in the matter by adopting a sympathetic attitude towards actions to limit some of the abuses with which the employment of child labour is fraught.*"

The meeting referred to in the above cited letter came to the conclusion that no good result could be achieved except by bringing together foreign and Chinese mill and factory owners inside and outside the Settlement, and securing unanimity amongst them as to the action to be taken. The members of the Council were not particularly optimistic of the outcome, inasmuch as in their opinion, the employment of child labour was due not to any wish on the part of the employers to exploit it in preference to adult labour, but rather to the action of the parents—doubtless often through force of circumstances—in sending out their children to earn their own livelihood and so contribute to the family income, a practice widespread throughout China from time immemorial. With these expression of views, the members of the Council ultimately recorded the opinion that the matter should be referred to the Shanghai Employers' Federation for consideration, with a request to express its opinion on the subject.

The need of adjusting the problem of child labour was so apparent that the point raised by the Council in such an informal manner received prompt consideration on the part of the joint Committees of the Employers' Federation and of the Cotton Mill Owners' Association, which on December 5th, 1922, at a lengthy meeting, discussed the feasibility of abolishing child labour in mills and factories at Shanghai.

The conclusions reached at this meeting were not altogether unfavourable to the proposed reform. The Committees resolved to approach the Chinese General Chamber of Commerce and the Chinese Cotton Mill Owners' Association with a view to securing their co-operation. The Committees expressed the opinion that legislation must come in the first instance from the Chinese.\* Furthermore, the Committees pointed out the fact that simultaneously with the abolition of child labour in factories at Shanghai some educational facilities for unemployed children should be given, which they communicated to the Municipal Council together with a copy of the letter addressed by the Committees to the Chinese Chamber of Commerce and the Chinese Cotton Mill Owners' Association, dated January 2nd, 1923. This letter we cite below, as setting out in full the view of the two influential industrial bodies, and explaining together with the answers of both Chinese organizations, to a certain extent, the ultimate failure of one of the noblest efforts of the Municipal Council :

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\*Mr. E. F. Mackay, Chairman, Employers' Federation, to Mr. N. O. Liddell, of the Municipal Council, January 8th, 1923.



"A joint meeting of the two foreign executive Committees of the Employers' Federation and the Cotton Mill Owners' Association of China was recently held to consider a letter from the Shanghai Municipal Council regarding the abolition of child labour in factories. After considerable discussion, it was decided that the only practical solution would be legislation that would prohibit the children working under a specified age, and the provision of schools for them during the hours that their parents are engaged at work.

"It was realized, however, that the appeal to the Chinese Government for this legislation must come in the first instance from such organizations as the Chinese Chamber of Commerce and the Chinese Cotton Mill Owners' Association; and in asking you to take the necessary steps we assure you of our most cordial support."

The replies of the Chinese General Chamber of Commerce and the Chinese Cotton Mill Owners' Association were absolutely identical. They agreed in principle with the necessity of restriction of child labour and informed the Employers' Association and the Cotton Mill Owners' Association that already two Bills had been introduced into the House of Representatives in Peking covering the two points raised by the joint Committees, namely: (a) the age-limit as applied to child labour, and (b) the question of providing educational facilities for the children of labouring classes. As far as the co-operation of the Chinese community was concerned the Chinese General Chamber of Commerce and the Chinese Mill Owners' Association stated that they had already taken steps urging the Peking Parliament and Ministers of Interior and Agriculture and Commerce to take action for the early passage of the bills in question in order that the new legislative measures might be enacted in the near future.\*

It seemed that this correspondence† predetermined the course of the proposed reform in view of the fact that without the co-operation of the above-named bodies any attempt to introduce it would have been hopeless. However, concurrently with the development of the Settlement as a centre of industry, there had arisen a new school of Chinese educated opinion, partaking largely of Western ideals, which urged the Municipal Council to take some steps in respect to the immediate solution of the problem.

On February 9th, 1923, the Municipal Council received a letter from a joint Committee of Women's Clubs at Shanghai‡ stating *inter alia* as follows:

"While fully recognizing the many practical difficulties which bar the way to any change of the present conditions, we none the less venture to urge:—

- (a) That the Council consider taking such steps as may be necessary to ensure the abolition of night work for children under twelve years of age (foreign count).
- (b) That the Education Commission at present sitting consider the provision of part time schools in such factories as come within

\*Mr. C. C. Nieh, Vice-President, China Cotton Mill Owners' Association, to Messrs. E. F. Mackay and Chas. Beswick, January 8th, 1923; Mr. H. C. Sung, Chairman, General Chamber of Commerce of Shanghai to Messrs. E. F. Mackay and Chas. Beswick, January 11th, 1923.

†Mr. E. F. Mackay to the Municipal Council, January 20th, 1923. Municipal Council to Mr. E. F. Mackay, February 24th, 1923.

‡The letter was signed by B. M. Gull, Chairman, British Women's Association; G. Mackie, Chairman, Social Service Board, British Women's Association; Anne Walter Fearn, President, American Women's Club; H. G. MacRostie King, Chairman, Social Service Department, American Women's Club; Helen Siao, President Shanghai Women's Club; T. T. Wong, Chairman, Social Service Department Shanghai Women's Club; Anna Kong Mei, Chairman, National Committee, Young Women's Christian Association of China.

the Council's jurisdiction, whereby the number of working hours for children would be automatically regulated.

- (e) That the powers of the Health Department be extended to include the supervision of factories in matters relating to ventilation, sanitation and safety.

In bringing these recommendations, the Joint Committee of Women's Clubs pointed out that the Chinese themselves were showing an active interest in the problem presented by the development of industrial labour. At the National Christian Conference held in May 1922, when 1,200 delegates attended from various parts of China, the following standard was introduced and endorsed: (a) No employment for children under 12 years of age; (b) one day's rest in seven; (c) safeguarding the health of workers by shortening hours, improved sanitary conditions and the installation of safety devices.

The above standards were further endorsed by the Peking Chamber of Commerce and the Chefoo Chamber of Commerce and various other Chinese organizations.

As a result of all the aforesaid the Municipal Council decided to appoint a Commission "to go into the whole question and to report thereon in due course, with recommendations for the Council's consideration." This Commission did not include any members of the Municipal staff, who were, however, available to give evidence and otherwise assist the Commission in its labour.\*

The intention of the Council was clear. The Council did not like to take the whole initiative upon itself and rather preferred to be guided in such a complicated question as that of child labour by joint foreign and Chinese public opinion. It realized full well that only with the largest support of the whole community would it be possible to bring about any change in the traditional system of Chinese labour. The Council's desire to see on the Commission as members persons recommended by the Joint Committee of Women's Clubs was duly forwarded to the Committee† and, further, the following persons were appointed by the Council to serve as members on the Child Labour Commission: Messrs. J. S. S. Cooper, E. J. Cornfoot, R. J. McNicol, H. Y. Mah, G. Okada, H. Lipson Ward, Mrs. D. MacGillivray, Miss Agatha Harrison‡ Miss May-ling Soong and Dr. Mary Stone.

These names speak for themselves. The Council selected experienced social workers of Shanghai from amongst the community in such a way as to ensure to the Commission an international character corresponding to the actual character of the heterogeneous population of Shanghai.

As far as the proposed work of the Commission was concerned, the Council's intention was in the first place to follow the principles expressed by the Employers' Federation, Cotton Mill Owners' Association, Chinese General Chamber of Commerce and Chinese Cotton Mill Owners' Association as given above, i.e., to co-ordinate them with the Chinese labour legislation.

"Since the Chinese Government has evinced a desire to improve conditions in mills and factories under its jurisdiction," said Mr. H. G.

\*Municipal Gazette, April 5th, 1923.

†N. O. Liddell, Secretary and Commissioner General to Miss May-ling Soong.

‡Miss Agatha Harrison resigned from the Commission on her departure from China in January, 1924, and Miss Dingman was appointed by the Council in her stead.

Simms, Chairman of the Municipal Council, opening the first session of the Commission on June 22nd, 1923, "and it appears to the Council an opportune time to work in co-operation with the Chinese Government, and rather than apply separate Rules and Regulations to factories and mills in the Settlement it would be much more advisable to take as a basis to work on the laws recently promulgated by the Chinese Government, and deal with them in the light of your experience and knowledge with a view to persuading the Chinese Government to add to or to modify their laws, so that we could adopt them here, thus securing uniform legislation both in and out of the Settlement. I feel sure we can rely on the French Council co-operating with us when the time comes to submit proposals to them."

Practically speaking, the task before the Commission as outlined by Mr. H. G. Simms was a little obscure. According to the opinion expressed by him, the Council had the intention to "persuade the Chinese Government to add to or modify their laws, so that we (the Shanghai community) could adopt them here, thus securing uniform legislation both in and out of the Settlement." In other words, the Council intended to submit proposals to the Chinese Government on the basis of the Commission's findings and, then, after their adoption by the Chinese Government, to enforce them in the Settlement as a Chinese national law. The official terms of reference handed to the Commission ran as follows :

Terms of Reference.

"To enquire into the conditions of child labour in Shanghai and the vicinity and to make recommendations to the Council as to what regulations, if any, should be applied to child labour in the foreign Settlement of Shanghai, having regard to practical considerations and to local conditions generally."

The Commission under the chairmanship of Mr. H. Lipson Ward, a noted local jurist, with the participation of the well-known social worker, Dame Adelaide Anderson, co-opted as a member of the Commission with the approval of the Municipal Council, started their work in June, 1923.

After one year's deliberations it submitted to the Municipal Council on July 9th, 1924, a report which presented an exhaustive investigation of the local conditions of labour in general and child labour in particular, supplemented with a list of mills and factories in the Foreign Settlement, Chapei and Pootung, showing nationality and number of adults and children employed, a memorandum on "The Factory System and Origin and History of Factory Legislation" by Dame Adelaide Anderson and "Industrial Employment of Children, Hongkong."\*

Briefly summarizing the materials presented by the Commission to the Municipal Council one sees that the Commission, after having investigated the conditions of child labour within and outside of the Settlement and the reasons of their abnormality, submitted to a very thorough criticism the Chinese Government's Provisional Regulations concerning child labour, promulgated by the Ministry of Agriculture and Commerce at Peking on March 29th, 1923.†

The conclusions of the Commission in that respect were very considerate. While admitting the imperfection and indefiniteness of the Regulations, characteristic of all Chinese modern legislation,

\*See Appendix.

†See Appendix.



the Commission nevertheless recommended to the Municipal Council, in the event of their being enforced outside the Settlement, to seek power to enforce them within the Settlement. The Commission shared the opinion that enforcement of the Regulations in the surrounding provinces of Kiangsu and Chekiang, or even in the province of Kiangsu alone, would be sufficient enforcement for this purpose. However, in the concluding part of its report it drew the attention of the Council to the fact that the Civil Governor of Kiangsu issued an ordinance in May, 1924, addressed to the Industrial Bureau of the province, recognizing that the Peking Provisional Regulations were imperfect in that they contained no definite provision for inspection, and suggesting that China should also organize a Commission to sit at Shanghai with a view to bringing about conformity between any regulations affecting Chinese and foreign factories.

In doing so the Commission inevitably removed the centre of gravity of the proposed legislation from nation-wide measures to strictly local Municipal regulations.

As a matter of fact, there was absolutely no hope of seeing any Chinese law concerning labour being enforced in the near future in China, in view of the absence of a Central Government with power to enforce its decrees throughout the country. Meanwhile, the circumstance that Shanghai was a Treaty port and that the Foreign Settlement was managed and controlled by a Municipal Council, whose powers were limited by the terms of the Land Regulations and the Bye-laws made thereunder, still did not present insurmountable difficulties to introducing a new Bye-law giving to the Municipal Council the necessary power to regulate the employment of children below any particular age or in any particular industry. The procedure for the introduction of such a Bye-law was not, of course, an easy one. A resolution of the ratepayers in special meeting assembled to that effect had to be approved by the majority of the consuls and ministers of the Foreign Powers having treaties with China, which always presented under ordinary circumstances certain difficulties. But the necessity of checking the evil of unrestricted child labour was so obvious that a serious opposition to the beneficial measure could hardly be expected.

In view of this the Municipal Council resolved to submit a bye-law concerning child labour to a special meeting of ratepayers. The text of the resolution proposed by the Council read as follows :

"That the following Bye-law, to be known as Bye-law XXXIX, be passed and approved and that the numbers of the present Bye-laws XXXVIII, XXXIX, XL, XLI and XLII be altered accordingly. Resolution<sup>VI</sup> concerning Child Labour, 1925.

(1) No person shall :—

- (a) for a period of 4 years from the date at which this Bye-law shall become effective employ in a factory or industrial undertaking any child under the age of 10 years.
- (b) After the expiration of the said period of 4 years employ any child under the age of 12 years in a factory or industrial undertaking.
- (c) Employ any child under 14 years of age in a factory or industrial undertaking for a longer period than 12 hours, in

any period of 24 hours, such period of 12 hours to include a compulsory rest of at least one hour.

- (d) Employ any child under the age of 14 years in a factory or industrial undertaking except upon the condition that every such child shall be given at least 24 hours of continuous rest in every period of 14 days.
  - (e) Employ any child under 14 years of age in a factory or industrial undertaking in connexion with any dangerous unguarded machine or in any dangerous or hazardous place or in any work likely to cause serious injury to body or health.
  - (f) Expose any child under 14 years of age employed in a factory or industrial undertaking to dangerous or hazardous conditions without having previously adopted all necessary and reasonable precautions for ensuring the safety of such child.
- (2) For the purpose of this Bye-law :—
- (a) "Factory" means any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to making any article, or part of any article, or altering, repairing, ornamenting, finishing, or adapting for sale any article, provided that at least ten persons are employed in manual labour in the said premises and the close, curtilage and precincts thereof.
  - (b) "Industrial undertaking" includes :
    - (i) mines, quarries and other works for the extraction of minerals from the earth ;
    - (ii) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding, and the generation, transformation and transmission of electricity and motive power of any kind ;
    - (iii) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure ;
    - (iv) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, and the carriage of coal and building material and debris, but does not include any agricultural operation.
  - (c) In any prosecution for an offence against the provisions of the Bye-law if it appears to the Court having jurisdiction in the matter that any person who is alleged in the charge to have been a child under a certain age at the date of the alleged offence was under that particular age at the said date, it shall be presumed, until the contrary is proved, that the said child was under the said age at the said date.
- (3) Every owner of a factory and every person carrying on an industrial undertaking shall at all reasonable times permit the duly authorised representatives of the Council to inspect such factory or the working of such industrial undertaking for the purpose of ascertaining whether the provisions of this Bye-law are being duly complied with.
- (4) Any person offending against or infringing this Bye-law shall be liable upon conviction to a fine not exceeding \$100 and/or imprisonment for any term not exceeding one month.

Resolution VII.—That the Council be authorized in its discretion to proceed with the proposals contained in Part 3 of the Report of the Child Labour Commission dated the 9th day of July, 1924.

This resolution, together with resolutions concerning the collection of wharfage dues, licensing of printed matter and stock and produce exchanges was presented to the special meeting of ratepayers on April 15th, 1925, and failed, as we know, to secure the necessary quorum by 202 votes out of 914 votes required for the lawful quorum according to the provisions of the Land Regulations. The foreign ratepayers displayed an astounding indifference to the proposed measure in spite of the widest publicity given to the subject and conspicuous interest displayed in the problem of child labour in the Settlement by H.B.M.'s Government and various foreign public bodies.\*

The cause of this indifference should largely be attributed to the same reason which made unpopular the measures of the Council with regard to the licensing of printed matter, wharfage dues and stock and produce exchanges. In brief, the proposed Municipal legislation aroused fear on the part of the Foreign Community of damaging its relations with the native community, which was strongly opposed to any extension of the Municipal authority, and conducted a most lively propaganda against the proposed legislation as an encroachment upon China's sovereign rights.

There were also special reasons which made the child labour resolution unpopular in local business circles and which we have already mentioned above. The joint Committees of the Foreign Employers' and Cotton Mill Owners' Association expressing its readiness to co-operate with the Municipal Council in the reform pointed out the fact that the legislation must come in the first instance from the Chinese and that simultaneously with the abolition of the Child Labour in factories of Shanghai some educational facilities for non-employed children should be given. This opinion was fully upheld by the Chinese Chamber of Commerce and Chinese Cotton Mill Association, which went even further and emphatically emphasized the point that "they conceive any reform beneficial to the country and not damaging to her industry only in the event of the nation-wide legislation of the Chinese Government being enforced at least in two adjacent provinces."

The first step of the Municipal Council seemed also to be inspired by the same idea, but in course of time, as already stated, the Commission on Child Labour deviated from the plan and concentrated their attention on municipal legislation as the only possible means to bring about an immediate amelioration

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\*Miss Dorothy E. Evans, Secretary, British Section of the Women's International League, London, to Mr. E. S. B. Rowe, Secretary, Municipal Council, February 24th, 1925, forwarding a Resolution passed at the Annual Meeting of the British Section of the Women's International League, dated February 20th, 1925, which stated, as follows:

"This Council of the Women's International League, having heard of the hard conditions of child labour in China, and particularly in the concession areas, rejoice that the Municipal Council of Shanghai have now appointed a Commission to report on the need for regulation of child labour.

"This Council urges that the Ratepayers' Assembly of that city support the adoption by their Municipal Council of Bye-laws prohibiting the employment of children under twelve years of age and limiting the hours of work as may be recommended by the Commission.

"That this resolution be forwarded to the British Consul at Shanghai, to be presented to the Municipal Council and other bodies concerned, to the International Labour Office and to the Secretariat of the League of Nations, for the information of the League Commission on the Traffic in Women and Children which has recently taken over the question of child welfare generally."



of the mediæval conditions of child labour in the Settlement. This was quite natural, but the Commission admitted itself that in some industries "the machinery used would probably have to be reconstructed," that "many mills have tried to eliminate small children from employment but they have met with little success owing to the pitiful requests by the parents of the children," and that finally the restriction of employment of children should go hand in hand with enlargement of educational facilities for them in the Settlement.

It is to be regretted that in regard to the latter there was no definite scheme elaborated by the Council except some vague indication that assistance would be sought from the mill and factory owners. Meanwhile the Educational Committee of the Municipal Council stated in its annual reports 1923 and 1924 that the policy of the Council as regards Chinese schools was based on the report of the Education Committee of 1911, i.e., that (1) the Council has no absolute duty to undertake the education of Chinese children, that (2) the Council should aim at a model training of a limited number rather than a scheme of general education, that (3) as regards elementary education Chinese in the Settlement should have the same facilities as those outside, but no more, that (4) in respect of secondary education the Council should regard it sympathetically, assist where it would be possible the Polytechnic School and, finally, (5) that for the time being the Council should not undertake any responsibility in the education of Chinese girls.\*

Without any intention to criticize the standpoint of the Council in regard to its obligations towards the Chinese ratepayers, it should be acknowledged that the attitude of the Council in general could not inspire much confidence on the part of the ratepayers. It was open to question whether the education of unemployed children would not be left to the mercy of the Chinese and foreign mill and factory owners, in the majority undoubtedly indifferent to Chinese educational problems. Furthermore, the prohibition of child labour involved not only questions of education, which necessarily had to be free in this case, but also the question of medical support of the unemployed children. Under these circumstances the Foreign Community was faced with the possibility of seeing hundreds and perhaps thousands of Chinese children soliciting alms on the roads of the Settlement, an event unknown in Shanghai, probably owing to the existence of the same largely practised child labour.

Indeed, the problem seemed to be insoluble, yet neither the Council nor the interested public bodies lost hope of bringing about the much desired reform and moving the whole labour problem in China from its deadlock. A most vigorous campaign was started in the local press and in society. On April 24th, 1925, the Municipal Council received a letter which was signed by 76 ratepayers, requesting that in the interests of good government in Shanghai another attempt should be made to secure a quorum for a special meeting to consider the legislation as well as the subjects on the agenda for the meeting of April 15th. The signatories to the

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\*Municipal Council's Report, 1923, p.188.; 1924, p.196.

letter asked the Council to call a further meeting, and announced that they would do all in their power towards securing a quorum. Following upon this letter the Council announced that a meeting would take place on June 2nd, 1925.

In fact, a special Committee under the Chairmanship of Mr. Pratt, H.B.M.'s Consul, was formed to conduct an agitation in favour of the projected legislation. It was no secret that the reform aroused great interest in governmental and social circles in England and that H.B.M.'s Consulate-General at Shanghai received semi-official instructions to exercise its moral influence to bring it about at any cost.

On the other hand, the Council took steps to disperse the apprehension of ill consequences, which some people anticipated from an early application of the Bye-law. On May 19th, 1925, the "Municipal Gazette" published a declaration of the Council, which stated:

"The attention of the public is directed to the fact that the Child Labour resolutions are identical in wording with those proposed at the last Ratepayers Meeting, with the exception that in Resolution VII, authorizing the Council to proceed with the proposals contained in Part III of the Child Labour Commission's Report, the words 'in its discretion' have been inserted, in order to enable the Council to mitigate cases of hardship that the operation of the proposed legislation might engender."

The modification was, beyond any doubt, very important, but it could in no way reconcile the opposition of a part of the Foreign Community and the Chinese residents, who in their turn conducted also a very lively agitation against the proposed measure, stating in numerous advertisements inserted in the local press and bills freely distributed in the Settlement, that any attempt on the part of the Municipal Council to introduce the reform constituted an *ultra vires* use of the power vested in it by virtue of the Land Regulations.

The final results of this struggle are well known. The Special Meeting of Ratepayers called by the Municipal Council on June 2nd, 1925, failed again to secure the necessary quorum, principally because of the violent propaganda against it by the Chinese, who partly succeeded in intimidating ratepayers from attending the meeting. The events of May 30th moved the interest in the proposed measure to the background. Far more important problems faced the Shanghai foreign and Chinese communities, and the Municipal Council, and it was obvious that until these problems had been solved, no measure proposed by the Council would meet with the full support of the ratepayers.

## CHAPTER X.

### SHANGHAI AND CHINA'S POLITICS, 1925.

The year 1925 marked not only the beginning of a new era in Sino-foreign relations but also a new epoch in the traditional methods of administration of the foreign settlements and concessions in China. These traditional methods, as we have already seen, failed in many instances after the political influence of the Diplomatic Body had become powerless to render effective support to the self-governing foreign communities in the Treaty ports of China.

New principles had to replace the old ones, and, as in the past, the solution of this problem was left to the most powerful foreign organization in China—the Council of the Foreign Community at Shanghai.

Second Kiangsu-  
Chekiang War—  
1924-1925.

The elimination of President Tsao-kun and the downfall of Marshal Wu Pei-fu did not signify the cessation of hostilities around Shanghai. The Kiangsu and Chekiang provinces and the centre of the whole of China's foreign trade, Shanghai, with its arsenal, escaped the general fate of the Chihli party.

On December 12th, 1924, Marshal Chi Hsieh-yuan, the Kiangsu Tuchun, was dismissed by the new Peking Government, and on December 24th fighting broke out between the forces of General Sun Chuan-fang, an ally of Marshal Chi and the new Tuchun of Chekiang, and the 4th Division, a unit of the former General Lu Yung-hsiang's army. This unit was taken over by General Sun Chuan-fang on the termination of the Kiangsu-Chekiang conflict in the autumn of 1924. The troops seemed loyal to their new allegiance until December, 1924, when their former General, Chen Yao-san, who fled together with Lu Yung-hsiang and Ho Feng-ling to Japan, re-appeared and resumed command.\* The fighting extended into January 1925, when, following the capture of Sungkiang by General Sun Chuan-fang, General Chen Yao-san began a general retreat towards the Shanghai district. Some four thousand of his troops reached the outskirts of the Settlement on January 4th, 1925, and billeted themselves in the vicinity of a village about a mile North-west of the Siccawei Cathedral and in another village near the aerodrome on Hungjao Road.†

Meanwhile, after remaining in Nanking for two weeks after his dismissal, Marshal Chi Hsieh-yuan came suddenly to Shanghai and took over the personal command of his forces stationed at Shanghai. His next move was to clear the district of the remnants of Chen Yao-san's troops. On January 11th, 1925, the allied troops occupied Lung-hua and the Kiangnan Arsenal and the main body of the defeated soldiers withdrew to the banks of the Siccawei Creek and to the French Concession, where their commanders sought safety and were disarmed by French Volunteers,

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\*Police Commissioner's Report, December, 1924—"Municipal Gazette," January 15th, 1925.

†Municipal Council's Report, 1925, p. 59.



Police and landing parties from the French men-of-war. 2,300 Chinese troops entered the International Settlement two days later and were similarly disarmed and placed in concentration camps.

The number of troops thus interned reached, according to the official estimate, about 10,000, out of whom 5,000 were placed in camps in the Settlement under Japanese, British and Italian naval guards. A large proportion of the balance was concentrated in a camp in the French Concession where American marines assisted in guarding them.\*

All disarmed troops were left by the victors to the care of the foreign authorities and the Chinese community in the Settlement.

After short negotiations between the Council and the Chinese Chamber of Commerce, the latter agreed to provide the necessary funds for the deportation of these interned soldiers to Tsingtao. The Council, in its turn, undertook to supply a police convoy essential to complete successfully this deportation. The disarmed soldiery presented an element far from desirable in the precincts of the Settlement.† In fact, in spite of most rigid precautions taken by the foreign authorities and the proclamation by the Commanders-in-Chief of the Allied Kiangsu-Chekiang Armies, that the district had been cleared of defeated soldiers, the northern and western suburbs of the Native city were partly subjected to looting.‡

The victorious generals returned to their respective headquarters—General Sun Chuan-fang to Hangchow and Marshal Chi to Chapei, where Marshal Chi issued on January 15th, 1925, a declaration of independence announcing the establishment of a new government in Shanghai. The declaration stated that Marshal Chi's movement was a revolutionary one and that the new Government, which was to be known as the Citizen's Government, was no longer subject to Peking's orders.

The first steps of this new Government were successful. The drive on Nanking very soon made Marshal Chi the master of the Shanghai-Nanking Railway, but the success was short-lived. Two days later he was obliged to retreat and ask reinforcement from his ally, General Sun Chuan-fang. The latter sent him some 3,000 men, but withdrew them shortly afterwards, leaving Chi to his own resources.§

\**Ibid.*

†Similar arrangements regarding the deportation of the interned troops were made between the authorities of the French Concession and the Chinese Chamber of Commerce. On January 18th, 1925, the first batch of 4,000 troops from the internment camps in the International Settlement were safely put on board the British India Co.'s str. *Talma* and dispatched to Tsingtao under the command of Major F. L. Wainright, Assistant Commissioner of Police, and by January 22nd, 1925, the repatriation of all troops was successfully completed. Reports received later indicated that they had been sent from Tsingtao to Pukow for re-enrolment in the army.—AUTHOR.

‡Amongst premises looted by the soldiers in the Western district was the Bureau of Foreign Affairs, near Route Ghisi, in the French Concession. Some of the soldiers having forced the doors open and made away with a large amount of loot. They broke the tables, desks, chairs and sofas which they could not carry away and used the wreckage as fuel. The beautiful carpets, rugs and pictures were stolen and the walls also damaged. It is needless to say that the Commissioner for Foreign Affairs himself took refuge in the French Concession at the first shots fired by the beligerents.—AUTHOR.

§This "tactful" move of General Sun Chung-fang, secured him later on the title of a Marshal and the confirmation of the appointment as Tuchun of the Chekiang Province.

Fengtien Army  
Occupies Shang-  
hai, January 28,  
1925.

The Government troops composed of Fengtien soldiers and a mixed brigade of Russians of General Chang Chun-chang's 1st Fengtien Army under General Nechaeff reached the Shanghai-Nanking Railway, and on January 24th defeated Marshal Chi's forces. Four days later their vanguard, consisting of fifty Russians and three Chinese reached Shanghai in an armoured train and occupied the northern station of the Shanghai-Nanking Railway. Meanwhile Marshal Chi Hsieh-yuan and his staff embarked and left for Japan in a Japanese boat following the steps of his predecessors, Generals Lu Yung-hsiang and Ho Feng-ling. The war was over. About 10,000 Fengtien troops under the personal command of General Chang Chun-chang occupied Shanghai and assumed control over the native districts.

Prompt measures were taken to disarm the defeated Kiangsu troops, while the Council, with a view to preventing the entry into the Settlement of fugitive soldiers and other undesirables, directed the erection of barricades at various points on the Chapei—Settlement boundary and western district, strongly guarded by volunteers, police and naval detachments.\* The Central Government of Peking in its turn immediately dispatched Marshal Wu Kuang-hsien, Minister of War, to negotiate peace between the victorious Fengtien leaders and General Sun Chuan-fang, whose troops continued to occupy the Kiangnan Arsenal.†

Mandates of  
January 15,  
1925, concerning  
neutralization of  
Shanghai.

In spite of the shortness of the conflict, which was in the nature of a personal struggle between Marshal Chi Hsieh-yuan, the appointee of the Chihli party, and General Lu Yung-hsiang, the appointee of the new Peking Government, it had a very far-reaching effect upon political and social events in the subsequent period of six months. As one of its direct results the Chinese Government was compelled for the first time to recognise openly the neutrality of Shanghai, which the foreign authorities had always striven to impress upon the Chinese officials. On January 15th, 1925, the Peking Government issued three mandates. The first abolished the Defence Commissionership (Governorship) of Shanghai. The second stated that—

“the Ministry of War is hereby enjoined to order the Shanghai Arsenal to cease work relating to the manufacture of military supplies so that the Arsenal may be leased to private persons and reorganized into an industrial establishment in order to develop industry and benefit the people. In the meanwhile the Shanghai Chamber of Commerce is appointed caretaker. Let the Ministry of War appoint special officials who will make proper arrangements with the Chamber in this connexion.”

And the third announced that thenceforth no troops would be stationed at Shanghai and no military organization permitted there. Of course, all these mandates were doomed to remain dead letters, for the Government had neither the force nor, possibly, any sincere desire to enforce them.

Consular Body  
and Mun. Council's  
measures to  
prevent further  
fighting.

It should be admitted that while the Diplomatic Body tried vainly to impress upon the Chinese the necessity of giving effect to

\*Mun. Council's Report, 1925, p. 59.

†On January 29th, 1925, a detachment of Fengtien troops left Shanghai North Station and proceeded to Siccawei with the intention of taking over of Lunghua and the Kiangnan Arsenal. Finding their progress barred by soldiers of General Sun Chun-fang, who occupied these places, they halted until the conclusion of peace negotiations, which were brought to a happy end on January 3rd, 1926.—AUTHOR.



the Mandates,\* the Consular Body and the Municipal Council† confined themselves to measures which corresponded more fitly to the amount of power enjoyed by them. They simply deported Chinese military men and leaders who sought refuge or residence in the Settlement and used its territory for fomenting trouble.‡ They confiscated and destroyed arms seized from defeated troops§ though the Chinese Government tried to oppose this measure, and took steps to prevent at any cost the smuggling of firearms through the port of Shanghai.||

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\*On January 27th, the Dean of the Diplomatic Body at Peking sent the following Note to the Waichiaopu :—

"In view of the situation near Shanghai, where renewed hostilities between Chinese military leaders again threaten the lives and properties of foreign residents, and in view of the fact that Chinese troops on one occasion entered the foreign settlements there and thus violated their neutrality, which the Chinese Government had undertaken to uphold in these military conflicts—conflicts which constitute a real curse both for the Chinese and foreign population of this country, for their trade, their occupations and their interests generally—I am desired by my colleagues, the heads of the Legations, in the interest of all peaceful inhabitants, whatever their nationality, to ask Your Excellency with insistence that very strict orders by telegraph be given to all the contending parties in the strife now raging in Kiangsu Province that under no circumstances must Chinese troops be allowed to come within the neighbourhood of foreign habitations in or near the foreign settlement and concession of Shanghai. They express the earnest hope that the Chinese Government, which is responsible, during the present warlike operations between Chinese troops, for the protection of foreign lives and properties, will not fail to maintain normal conditions around Shanghai, and they will be happy to receive an early assurance from Your Excellency to this effect."

†See "Shanghai: Its Mixed Court and Council," 1842-1924, p. 29.

‡Referring to the position of the Council in this matter Mr. S. Fessenden, Chairman of the Council, at the Annual Meeting of the Ratepayers, April 16th, 1925, made the following statement :

"These disturbances necessitated a re-statement of our traditional policy towards the strangers within our gates. The fundamental policy of the Foreign Settlement consists in a scrupulous observance of neutrality, and, while we made it plain that we would afford the sanctuary of neutral territory to those peaceably inclined, we would deny admittance to those whose presence would imperil the peace and good order of the Settlement, and in the latter terms we include political malcontents and those who make use of the security afforded by residence in the Foreign Settlements to foment plot and intrigue against the Chinese Government."

§In connection with this opposition Mr. Chauncy P. Holcomb, of Messrs. Fessenden, Holcomb and Snyder, Shanghai, filed on behalf of the Chinese Government with the Court of Consuls a petition asking for an injunction preventing the destruction of arms and ammunition seized by the Council in the house of Mr. Tsai Cheng-hsien, former Tull of Kiangsi, on the ground that they formed the property of the Republic of China. The Court consisting of Messrs. E. S. Cunningham, Consul-General for the U.S., J. L. Isley, Consul for Switzerland, and J. T. Pratt, H. B. M's Acting Consul-General, denied this petition on the ground that—

"The facts are that the arms and the ammunition in question were unlawfully brought into the International Settlement at Shanghai and were subsequently seized by the Police who brought them into the Mixed Court. The Mixed Court made an order that the arms and ammunition should be destroyed and handed them back to the Police of the International Settlement for that purpose. It is the opinion of the Court of Consuls that in executing such an order duly made by the Mixed Court the Police of the International Settlement are carrying out one of the duties for which the Police Force was created, that no action can be sustained in this Court against the Municipal Council in respect of the execution by the Police in the normal course of their duties of such an order, and that, consequently, an injunction cannot issue from this Court to restrain the Police from carrying out the present order of the Mixed Court."—"Mun. Gazette," May 21st, 1925.

||In accordance with the recommendation of the Smuggling of Fire Arms Prevention Committee appointed by the Council, the Council addressed letters to the Chinese General Chamber of Commerce, Chinese Bankers' Association, Cantonese Guild, Ningpo Residents Association and Kya Kang Daung Rice Guild, inviting their co-operation in the projected repressive measures to be taken against the illegal importation of arms and ammunition. The reply of Mr. Yu Ya-ching, Chairman of the Chamber of Commerce, contained inter alia the following passage :

"We were convinced at the time that, in view of the general situation being unsettled, the importation of arms could not but lead to the prolongation of international warfare with most disastrous consequences to the districts affected. This Chamber communicated with the Superintendent of Customs and the Commissioner of Customs, urging the adoption of strict measures to effect the detention of the arms in question, a special telegram was addressed to Provisional Administrator Tuan in Peking, and likewise to the Ministry of Army, placing before them our specific request that in future authorization be withheld from the provincial authorities when applications are addressed by them for permits for the transportation of munitions."—"Mun. Gazette," January 30th, 1925.



The resolution of the Peking Government concerning the Kiangnan Arsenal was put into effect, and on February 3rd, 1925, the Arsenal was handed over to the Chinese General Chamber of Commerce, which announced its intention of transforming it into machine works\* for the manufacturing of implements and engines.

Project of establishment of Shanghai Special Area, January 1925.

Furthermore, in order to prevent the revival of any inter-provincial rivalry for the direct or indirect jurisdiction over Shanghai, the Peking Government appointed a committee to study the question of transforming Shanghai into a special administrative area under the control of a Tupan, who should be responsible solely to the Government at Peking. This plan had nothing to do with the establishment of the Municipality of the Greater Shanghai referred to in the preceding chapters and effected by Marshal Sun Chuan-fang in 1926. It revived rather the original idea laid at the foundation of the Shanghai Defence Commissionership (Governorship) of 1916, abolished by one of the three mandates of January 15th, 1925. This project had in view solely the delimitation of the zones of influence of the two respective Tuchuns of Kiangsu and Chekiang.

As far as the plan concerning the withdrawal of all troops from Shanghai was concerned, the latter failed utterly at the very beginning. In spite of the peace agreement concluded between Marshal Sung Chuan-fang and General Chang Chun-chang in command of the Fengtien troops, only a part of the latter were removed, while Sun's troops remained still stationed in Pootung ready to attack the Fengtien troops at any moment. The relations between the parties at the end of February, 1925, were strained to such an extent that the local foreign and Chinese press expressed an earnest apprehension that a new war was unavoidable.†

This tension was not relieved by General Lu Yung-hsiang's resignation from the Pacification Commissionership of Kiangsu and Anhui and the official statement of the Fengtien Command that neither Marshal Chang Tso-lin nor any of his subordinate generals had any views in regard to Shanghai, other than restoring order, and disarming and repatriating Marshal Chi's defeated troops.‡ Their moves were watched with deep suspicion; and despite the

\*The aspirations of the Shanghai merchants to convert the Arsenal for peaceful purposes failed to materialize. In the autumn of 1925 the Arsenal was again occupied by the troops of Marshal Sun Chuan-fang and was directed to reopen. The Kiangnan Arsenal in itself presents very little value from a modern military point of view owing to its limited production and the high cost of operation, which make it even useless, inasmuch as arms are smuggled into China in such great quantities as to make it cheaper to buy from abroad than to manufacture at home. The Kiangnan Arsenal was established by Li Hung-chang in 1863 at Nanking under the directorship of Dr. (Sir Holliday) Macartney, a British army officer attached to Li Hung-chang during the Taiping rebellion, and later Councillor and Secretary to the Chinese Legation in London. By order of the Viceroy Tseng Kuo-fan the Arsenal was removed to Shanghai, where it was re-equipped with modern machinery for the manufacturing of heavy artillery. Almost all of the existing Chinese forts are equipped with guns manufactured in this arsenal, but in most cases these guns are obsolete and can be outranged by the guns on even the smallest of foreign men-of-war in Chinese waters. The Arsenal includes fairly well-equipped Rifle and Gun Factories capable of producing several thousands of pistols, and what is known as Chinese 6.8 mm. Mausers and some batteries of field and mountain guns per annum.

†"North-China Herald," February 21st, 1925; The "Sinwanpao," February 16th, 1925.

‡Statement of General Chang Chun-chang to the Consular Body and the Chairman of the Mun. Council, February 2nd, 1925.—"North-China Herald," February 7th, 1925.

fact that their arrival seemed to announce a new era in the history of the Chinese section of Shanghai, and despite the discipline amongst their soldiers, which favourably distinguished them from the Chekiang soldiers, the Fengtien troops and their commanders were decidedly unpopular amongst the Chinese population inside and outside the Settlement.

They were described as Manchurian mercenaries and Japanese hirelings, whilst the presence of the Russian brigade only deepened this odium. The Fengtien Command was not unaware of this. It was not misled as to the real feeling of the population by the splendid reception given by the Chinese General Chamber of Commerce.\* Its actions in Shanghai were marked by indecisiveness and lack of proper authority and firmness. Moreover, in displaying leniency in many matters which required particular firmness, they obviously tried to win the sympathies of the local Chinese population and to dispel the odium which followed their steps in China inside the Great Wall.†

The situation in Shanghai required prompt and firm action. The anti-Japanese movement and the anti-foreign propaganda of 1919-1923 appeared to revive with a new force. The signs of such a revival became manifest in December, 1924, when the Fengtien Army entered Peking and established in co-operation with Marshal Feng Yu-hsiang's People's Army the new Government headed by Marshal Tuan Chi-jui as Provisional Chief Executive. A meeting organized under the auspices of the Anti-Christian League was held at Shanghai. Speeches condemning Christianity as an instrument of the strong for the oppression of the weak were made and resolutions were passed urging the overthrow of the present social system and the Peking Government.‡

Revival of anti-Japanese movement, February, 1925.

We do not attribute the revival of the anti-foreign propaganda and the subsequent anti-Japanese strike to the appearance of the Fengtien party on the political stage at Shanghai and Peking, but we think that both events were simply the continuation of the anti-Japanese boycott and the anti-foreign movement of 1919-1923.

Strike at Nagai Wata Kaisha, February 9, 1925.

We have also every reason to believe that the statement made by the General Manager of the Nagai Wata Kaisha to the representative of the "North-China Daily News" in February, 1925,§ was true regarding the epidemic of strikes, which started on February 9th in one of the mills of the Company, and which by February 14th had extended to six Japanese companies involving within five days no less than 31,828 workers.|| The wages in the Japanese mills were not lower nor was the treatment and general conditions of labour in the Japanese mills in Shanghai worse than in other foreign or Chinese owned mills and factories.

\* "North-China Herald," February 21st, 1925.

† Statement of Mr. S. Fessenden, Chairman of the Mun. Council, at the meeting of the Judicial Inquiry, October 13th, 1925, Mr. S. Fessenden expressly pointed out that in his opinion the Chinese authorities, if not actually encouraging the trouble, were passively permitting it.—"North-China Herald," October 17th, 1925.

‡ Police Commissioner's Report for December 1924.—"Mun. Gazette," January 15th, 1925.

§ "North-China Herald," February 21st, 1925.

|| Police Commissioner's Report for February 1925.—"Mun. Gazette," March 9th, 1925.

The spread of the strike movement in February, 1925, was due to reasons of a far deeper nature than ordinary discontent of workers with their wages, conditions of labour or administration.

According to the Police report\* and the above statement of the General Manager of the Nagai Wata Kaisha, the immediate cause of the strike was the dismissal of a number of employees for disobedience, out of whom six were prosecuted in the Mixed Court, and imprisoned for different terms from 7 days to 6 months.† This, of course, served to aggravate the hostility of the workmen, and the traditional Chinese agitators of extremist views saw in the incident an opportunity to further their aims. The violent campaign against the Nagai Wata Kaisha mills resulted immediately in a strike of employees of other Japanese mills. Printed handbills containing demands for reinstatement of the dismissed men, an increase of 10 per cent. in wages and improved working conditions immediately appeared, although no direct demand was made to the administration of the mills. Subsequent investigation showed that a Chinese school, which served as a meeting place for the workers, had some days previously been removed from the Settlement to an address in Chinese territory and occupied by a well organized body of agitators who were responsible for the publication of these handbills. From this place the whole movement was directed and to it led all trails of the existence of a carefully planned organization.

On February 10th, 1925, a procession of strikers crossed the Soochow Creek from Chinese territory, and invaded one of the Nagai Wata Kaisha mills, where they did considerable damage and forced the employees to discontinue work. Thirteen of the most active agitators were arrested and charged in the Mixed Court, but the leaders of the movement remained outside the reach of the Municipal Police. Neither on this occasion nor during the next few days, when a party of workers and agitators caused a stoppage of work at three other mills‡ and attacked a motor car occupied by Japanese, did the Chinese police show any signs of its existence.§

"Notwithstanding assistance given by the Municipal Police in communicating full and accurate information to the Chinese Authorities about the activities being pursued in Chapei, and repeated representations regarding the necessity for police action," states the Commissioner of Police in his report for February 1925, "these officials remained indifferent and suffered intimidation by pickets to continue without interference. The Municipal Police adopted an attitude towards the intimidators in keeping with the seriousness of the situation, and warrants were procured in all cases where evidence was available. In this way no less than 60 persons were arrested while 18 others had to seek safety in flight. This action completely upset the strike organization, and the

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\*Mun. Council's Report, 1925, p. 60.

†*Ibid.*

‡The Japan-China Cotton Mill, the Dah Kong Cotton Mill and the Tayoda Cotton Mill.

§The motor car was occupied by seven employees of the Tayoda Cotton Mill, including a Japanese doctor and Mr. Harada, the factory manager. The latter was beaten about the head with a stick and succumbed to his injuries on March 1st, one of the others was shot through the chest and a third was beaten and thrown into the Soochow Creek. The crowd, which appeared to be led by a female student waving a white flag, was finally dispersed after the Shanghai Woosung Police had fired several shots. The Municipal Police, who have only authority to function on the road, succeeded in arresting nine of the rioters.—Mun. Council's Report, 1925, p. 61.



growing weakness of the agitators was manifest in the increasing numbers of the strikers who attended the mills daily to register their names which entitled them to an emergency bonus."

In fact, the Japanese mill owners paid 30 per cent. of wages to all workers who made their appearance and registered daily their names in the mills. The number of these workers was quickly increased as soon as the Municipal Police succeeded in eliminating some of the most active agitators.\*

However, the presentation of certain demands by the strikers for a moment supplied to the movement an aspect of an economic dispute†, and the interested Japanese owners of the mills expressed themselves ready to enter into any negotiation with the strikers for the settlement of the conflict. They willingly accepted the good offices of the Chinese public bodies, which expressed a willingness to act as mediators.‡

On February 25th, 1925, the representatives of the employers and employees met in the Chinese General Chamber of Commerce together with the delegates of the latter, the Commissioner for Foreign Affairs and other Chinese officials acting as mediators, and an agreement, which appeared to be nothing more than a reiteration of the conditions under which the employees formerly served, was signed on February 26th, 1925.

The conclusion of this agreement aroused great enthusiasm not only amongst the interested mill workers but also amongst the Chinese public at large. It was interpreted as a decided victory over the Japanese and boastful handbills were disseminated far and wide among the masses of the Chinese population in the Settlement.§ All the men held in the custody of the Chinese authorities as leaders and agitators were immediately released, while forty-nine agitators arrested by the Municipal Police and charged with committing offences arising out of the strike were either acquitted or sentenced by the Mixed Court|| to light punishments. This leniency was

\*On February 20th, 1925, the Municipal Police succeeded in arresting Tsha Tsz-woo, the leader in the Yangtzepoo section and his female associate Wo Sien-teing, which resulted in a complete tranquilization of the whole district.—Police Report February 1925, *ibid.*

†The demands presented and published by the workers in the local Chinese press contained the following seven items:

- 1.—That in future no Japanese foreman be allowed to strike Chinese workers and/or impose fines.
- 2.—That wages be increased by 10 per cent., and be paid in big money.
- 3.—That all workers who have been detained in connexion with the strike be at once released, and that compensation be paid to the families of those who have been wounded or killed in the strike riots.
- 4.—That in future wages be paid fortnightly, and that no pay be kept "in hand" for any period.
- 5.—That a bonus of four days' pay be given to workers whose attendance during the month has been regular.
- 6.—That wages of workers on the sick list or on leave be paid in full.
- 7.—That full wages for the period of the strike be paid.

‡In reply to a question put to him by Mr. Raita Fujiyama in the House of Peers on February 19th, 1925, concerning the strike at Japanese cotton spinning mills in Shanghai, Baron Shidehara, Minister of Foreign Affairs, after making reference to the cause of the strike as well as to the so-called demands by the strikers, stated in part:—

"It appears that the present strike is not of such a simple nature as it is generally supposed to be, though it is clear to us where the underlying motive lies. As to preventive measures, instructions have already been given to the Japanese authorities in both Shanghai and Peking to take steps necessary to cope with the situation and also for the protection of Japanese interests."

§Commissioner's of Police Report for February 1925.—"Mun. Gazette," March 19th, 1925.

||Messrs. M. Tajima and Loh.

directly due to the general desire on the part of Japanese diplomacy to eliminate all causes of possible discontent on the part of the workers in future.

Soviets and the  
strike, February,  
1925.

It is very difficult to trace at this juncture the actual role of the Chinese political leaders, the Kuomintang, and the agents of the Union of Soviet Socialist Republics and the Third International in staging the strikes and disturbances in February 1925 at Shanghai. The proximity of the events bars the access to many documents throwing light on the activity of these bodies, while the reports published so far are lacking in documentary evidence. However, analysing the contents of handbills, pamphlets and other articles published and put into circulation amongst the Chinese population in February, one can arrive at the conclusion that the whole strike movement proceeded under the influence of communist political ideas. As in the past, the Soviets, through their diplomatic representatives in China, encouraged the Chinese masses over the heads of the Chinese government to commit such acts as were thought would expedite the abolition of extraterritoriality.\*

The logic of these encouragements was the more irresistible in that the Chinese saw the results of the Soviet political doctrine here in the Far East. The Soviets triumphed. The Japanese were compelled to recognize them and to sign an agreement whereby they lost everything which they previously obtained from Russia by force of arms. They had to evacuate Saghalien, and to waive their claim for compensation for the Nicholaevsk-on-Amur massacres; they lost "face" not before an actual military power, but before an onslaught of a doctrine which threatened the very foundation of the Empire of the Rising Sun.† Indeed, it was a Soviet triumph able to fan into flame not only the imagination of youth, but also the imagination of sober-minded Chinese businessmen.

The prosecution of Zau Lih-tz, President of the Shanghai University and editor of the "Minkuopao," and the subsequent police raid on the premises of the University, confirmed the existence of a well-organized Chinese Communist party in touch with similar organizations in Russia, Germany and France and affiliated with the left wing of the Kuomintang.‡ The main body of this party according to evidence produced in this case, consisted of students and their professors§, while the funds for the propaganda and maintenance of the University and the newspaper were partly received from the headquarters of the Kuomintang in

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\*In course of a public speech on November 7th, 1924, L. Karachan, the U.S.S.R. Ambassador at Peking, stated as follows:

"I was glad when I saw this morning a statement by the Chinese Foreign Minister who spoke quite naturally in careful terms of a revision of treaties with foreign Powers as being an order of the day. Now as I am not the Foreign Minister of the Republic of China I may be permitted to say more definitely that those treaties should not only be revised: they ought to be torn asunder and abolished, because they strangle China and because China cannot live under them."—AUTHOR.

†Treaty between Japan and U.S.S.R., 1925.

‡Crim. Case—S.M.P. vs. Zau Lih-tz before Messrs. Kuan and A.J. Martin, February, 1925.

§Correspondence between Prof. Kiang, Shanghai University, and Yuhon, Germany, seized by the Mun. Police in the Shanghai University, June 3rd, 1925. Crim. C. 4405, Nanking Road Riots, 1905, Exhibit 2.

§Commissioner's of Police Report for June 1925.—"Mun. Gazette," August 6th, 1925.

Canton and partly from "an unknown source at Peking."\* However, among the fifty agitators and ringleaders of the strike prosecuted in the Mixed Court only two were students, whose participation in the strike bore rather an incidental character.

With few exceptions the strike movement was viewed by the Chinese public with sympathy, and the native Press seized every opportunity to encourage it by publishing articles inciting anti-Japanese feelings amongst the masses.

The revival of the anti-Japanese propaganda and the activity of the extremists did not pass unnoticed in Chinese official circles at Peking. The Chinese Government realized from the beginning that the growing anti-Japanese and anti-foreign activity was not only directed against the Japanese and foreigners, but also against the domination of the northern allies in China's political life. The Chinese masses were steadily worked up in the belief that the Peking Government was selling China to foreign capitalists, and therefore had to be overthrown.†

Chinese Government and the Anti-Japanese Movement, 1925.

The position of the Government was very difficult. It could not resort to harsh measures for the suppression of this seditious activity as it was largely dependent on the support of the Kuomintang, whose friendship and participation in the forthcoming Reorganization Conference at Peking could supply it with an aspect of a national affair. This Conference had to stabilize the national finances, abolish the system of tuchunates, disband superfluous troops, and what was perhaps more important, to prevent a new split between the two powerful Tuchuns—Marshals Chang Tso-lin and Feng Yu-hsiang, whose co-operation formed the real basis of the existing government combination.

Meanwhile, the hopelessness of the situation was apparent. The divergency of opinion and interests between the two marshals deepened every moment. The Kuomintang refused to take any part in the Conference and advocated instead a National Conference in conformity with the fundamental principles of the party. The inclusion of some of its members in the Cabinet‡ and the visit of Dr. Sun Yat-sen to Peking, did not clear up the political horizon. On the contrary, their conduct *vis-à-vis* the Peking Government and the activity of the left Kuomintang added further confusion to the general situation.

\*Statement in Crim. Case S.M.P. vs. Zau Lih-tz, the Editor of the "Minkuopao" before Messrs. Kuan and A. J. Martin.

†As an instance of such propaganda we may cite one of the most typical pamphlets freely distributed amongst the masses and found by the Mun. Police in the Shanghai University on June 4th, 1925. This pamphlet stated as follows:

"That our Government is pro-Japanese is the result of Tuan being the chief Executive. On this occasion the Japanese Government has made a direct attack upon the Chinese people. If all the Chinese people do not resist quickly, the Japanese who attacked Shanghai labourers to-day will make the people throughout the country suffer to-morrow. Before we attempt to overthrow Japanese Imperialism and the Chinese Government which is pro-Japanese, we must first take steps to resist the attack and help the workers of the Japanese cotton mills in their struggle in Shanghai. The trouble on May 4 and the anti-Japanese demonstration were the result of the old Anfu party being in power. Fresh anti-Japanese outbreaks are unavoidable.

People throughout the whole country who are now under oppression rise up quickly and back up the Shanghai labourers. The whole country must boycott Japanese goods and advance one more step; that is, to overthrow the influence of Japanese Imperialism in China.

We must do our utmost to fight against the capitalists. Always ready."

‡Messrs. Yeh Kung-hoo, Minister of Communications, ex-minister of Finance at Canton, and Wang Chiu-lin, Minister of Education.



The agitation among the labouring masses in the country grew more and more manifest, while the situation in Shanghai was even worse than at the beginning of the anti-Japanese strike. The organization of workers into different Labour Unions proceeded with amazing swiftness, and fresh issues of handbills told the workers to form one big union in preparation for a renewal of the struggle.\* Meetings and processions were held in the native suburbs in Shanghai under the auspices of persons known to the Municipal Police as dangerous extremists. The speakers denounced not only the Japanese but also the Municipal Council, which was accused of assisting the former in a manner which "exceeded the bounds of justice." The workers were urged to place themselves under the banner of the Kuomintang and fight the imperialists and militarists.†

Chinese Govern-  
ment Measure  
against Commun-  
ists. Anti-Com-  
munist Law,  
February 24,  
1925;

On February 24th, 1925, the Ministry of Justice enacted some regulations for the suppression of the Chinese Communists which consisted of several penal provisions, the gist of which was as follows :

- (1) Anyone who advocates Communism shall be sentenced to penal servitude ranging from 5 to 10 years.
- (2) Anyone who disturbs public peace or incites radical thoughts into or instigates the people against law and order shall be sentenced to penal servitude for the same period as provided above.
- (3) Anyone who is engaged in the propaganda of Communism or is guilty of any outrageous conduct shall be sentenced to penal servitude ranging from 10 to 15 years.
- (4) Anyone who utilizes Communism to disturb the public peace shall be sentenced to penal servitude ranging from 3 to 5 years.
- (5) Anyone who advocates or incites Communism by means of financial support shall be sentenced to penal servitude ranging from 3 to five years.
- (6) Anyone who, guilty, as he or she may be, of the offences enumerated above, repents and surrenders himself or herself to justice, shall be immune from punishment.

A glance at these provisions suffices to make one understand that their edge could be turned either against the Communists or against the Kuomintang at the discretion of the Peking Government. But the subsequent events prevented this law being put into force.‡ On March 12th, 1925, Dr. Sun Yat-sen died in Peking surrounded by his close followers, and the whole country was plunged into mourning. Thousands of memorial services, processions and meetings were held in memory

\*Commissioner's of Police Report for June 1925.—"Mun. Gazette," August 6th, 1925.

†The above cited report of the Commissioner of Police gives in full one of the most interesting leaflets, which is very characteristic of the moment and which we permit ourselves to cite also in full :

'Our dear Labourers!—The Chinese Kuomintang land force recently participated in the fight against the oppression of labourers and threw away their lives for the benefit of labourers. All labourers should be requested to assist in dealing with the matter. The unification of labourers and peasants is a matter of paramount importance in the fight against the Imperialists and militarists. To secure the emancipation of China, the labourers and peasants must organize and work in harmony. May 1st, this year, is the anniversary of the meeting of representatives of the labourers. All labourers should be requested to sing "Long live the Peasants, Soldiers and Labourers! Long live the Republic of China! Long live the Chinese Kuomintang party!" Let peasants, labourers and soldiers unite together and struggle for the emancipation of China. Everything should be sacrificed towards the attainment of the end.'

‡The regulations against Communism, though never enforced and scarcely recognised by any of the Chinese public bodies and institutions, remain, however, still unrepealed and can always be brought into operation by an enterprising Chinese Administrator.—AUTHOR.

of the "Greatest Chinese Revolutionist." The prestige of the Kuomintang was raised to the highest point. The newspapers published the last will of the departed and thousands of orators and ardent disciples urged the masses to follow his last covenant and to co-operate with "those races of the world that have treated China equally, working for the speedy abolition of 'unequal treaties' ".\*

It was evident that in these circumstances no government, if it did not wish to be overthrown, could venture to do anything which could be even indirectly interpreted as a hostile act against a party which was identified by the whole nation with its greatest contemporary teacher and national hero. On the contrary, the best course was to associate itself with a popular movement of such proportions, and sail with the tide.

An early manifestation of the temper thus stirred up was the strike of the Japanese cotton mill workers at Tsingtao, which broke out in the middle of April and assumed from the very start such threatening dimensions that the Japanese Government was compelled to forward a Note to the Waichiaopu calling the attention of the Chinese Government to the serious situation created by the strike at Tsingtao and asking the Government to take the necessary steps to prevent any outrage.†

The strikers' demands presented to the administration of the Japanese mills at Tsingtao were practically the same as those presented by the Shanghai workers to the Nagai Wata Kaisha and others during the first strike and were even less well founded. The Chinese police, under instructions from Peking, raided a strikers' meeting and succeeded in arresting several ringleaders and seized a large quantity of extremist literature and correspondence, demonstrating that the whole movement had been organized by a party of agitators who had arrived from Shanghai and Canton. The strike at Tsingtao was immediately followed by a strike of the Shantung Railway employees and by serious students' disturbances in many parts of China. The tension was so great that in view of the approaching May 7th, the anniversary of the acceptance of the 21 Japanese demands in 1915, the Minister of Education had to issue an order prohibiting the students to hold any processions and demonstrations on that day. This resulted in an attack upon the Minister's house at Peking by several hundreds of students who forced an entry into the house and smashed windows and furniture. Police were called in and arrested 17 of the ringleaders,

Strike at Japanese Mills at Tsingtao. April 1925,

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\*Dr. Sun Yat-sen left two wills, one addressed to the Kuomintang, and the other dealing with the disposition of his personal property. On March 12th, 1925, the contents of these documents were announced by Dr. Wang Ching-hai. The first stated:

'For the past years I have engaged myself in national revolution, the aim of which has been to secure freedom and equality for China. From my experience I know well that to gain such ends we must urge the masses to co-operate with those races of the world that have treated us equally. Since the revolution is not completed all my colleagues ought to strive continually in accordance with my writings "Plan of National Construction," "Outline of Reconstruction," "Three People-Theory," and my declaration at the First Delegates' Conference in Canton.

'Regarding the convocation of the National Conference, and the abolition of unequal treaties, which I recently advocated, you must work speedily to achieve these objects.'

†Note of the Japanese Minister at Peking to the Waichiaopu, dated April 29th, 1925.

who were detained in custody on criminal charges. A fracas ensued thereupon between the police and the students trying to release their comrades in which, it was alleged, three students received fatal wounds.

Student demonstrations at Peking, May, 1925.

On May 9th, 1925, twenty to thirty thousand students from most of the schools and colleges of Peking paraded through the streets in Peking as a protest against the action of the police. The processionists tried to effect an entrance into the house of the Chief Executive but found it heavily guarded by troops of Marshal Feng Yu-hsiang, and were compelled to retire. However, twenty of their delegates were received by the Chief Executive to whom they presented their demands that the Minister of Education\* should be shot, that the seventeen arrested students be released, that the chief of police should be dismissed from his post and suitable reparation should be made for the death of the three students.

It was, as a matter of fact, just a reiteration of the story of 1919, when the students attacked with impunity the home of the Chinese Minister to Japan and the Government was compelled to yield to their demands and dismiss three Ministers. This time, however, the Government found for a moment sufficient presence of mind to assume a firm stand in the matter and reject the radical demands of the students.

The news of what had happened at Peking failed to reach Shanghai on the date of the celebration of the "Day of National Disgrace," and, therefore it passed comparatively quietly, although some days previously an attempt was made to engineer another strike at the Nagai Wata Kaisha mills.

We draw the attention of the reader to all these details in order to elucidate as fully as possible the situation which existed in Shanghai during the few days preceding the riot at the Japanese mills of May 14th, and 15th, and which resulted in the events of May 30th, 1925, and the subsequent general strike.

Second strike at the Nagai Wata Kaisha Co., May 14, 1925.

On May 14th, 1925, the employees of one of the mills of the Nagai Wata Kaisha declared a strike as a protest against the discharge of two Chinese foremen. The stoppage of this mill resulted in the administration of another mill, which depended on the first for material, being compelled to suspend its operation. Notices were posted to that effect, and, in the meantime, workmen unemployed through no fault of their own were informed that they would be given one-half their wages. Notwithstanding this, a large number of workers appeared as usual at the gate of the mill and, seeing it closed, forced their way by breaking it down into the compound, passing a party of Sikh constables and Japanese foremen. Armed with sticks and similar instruments the mob attacked the mill and began to destroy the machinery.† It assaulted the Japanese overseers, who, armed with revolvers, tried to defend the property and themselves from the infuriated mass, and fired several shots with the result that seven of the attacking crowd were injured, one of whom died the next day.

\*Mr. Chang Shih-chao.

†The damage done to the machinery amounted to M. \$50,000 and caused the discontinuance of work of three mills, and the unemployment of approximately 8,000 persons.



Strong police reinforcements were immediately dispatched to the scene of disturbance, and when the mob rushed to another mill, they were prevented from entering the compound, whereupon they turned round on the police, and in a hand-to-hand fight tried to obtain possession of the police carbines. After firing thrice into the air the police succeeded in dispersing the crowd and restoring order. Several arrests were made amongst the ringleaders and most noisy agitators.

On May 16th, and 17th, 1925, the situation was quiet, with the majority of the operators at work, while the owners were repairing the damage done in the riot. However, a considerable amount of propaganda was going forward. A big demonstration was announced with a view to collecting funds for the maintenance of those workers who still abstained from resuming work. And whilst the strike of February appeared on the surface to be of an economic character, this time the mask was thrown aside and banners bearing inscriptions such as "Be firm to the end," "Resolve to fight to the utmost" and "Strike until our aim is attained" were displayed, and the overthrow of "capitalists" and "imperialists" was urged.

On May 24th, 1925, a memorial service was held in Chapei for the man by the name Koo Tseng-hung, who was killed during the riot on May 15th. Over 5,000 people attended this meeting. The coffin containing the remains of the deceased was exhibited amid a mass of scrolls and banners with inscriptions inviting retaliation for his death.\* The meeting passed, however, without any further incident, and the general situation did not warrant particular apprehension of further grave disturbances. Peace and order reigned in the Settlement and in the adjacent native districts except in the regions close to the mills affected by the strike. The business and social life proceeded normally and nobody could anticipate the possibility of the sudden outburst of unbridled and wild hatred which overflowed the whole country a few days later.

In effect, from the preceding chapters we know that the residents and authorities of all classes in Shanghai, both foreign and Chinese, were accustomed to the constant fermentation amongst the Chinese extremists, students and labourers, which, as a rule, in spite of a threatening appearance, ended without much complication at the first sign of firmness displayed either by the foreign or Chinese authorities.

We may even say that the psychology of the majority of foreigners in China in general and Shanghai residents in particular, was unable to react to such common events as anti-foreign agitations or riotous conduct of Chinese students. This may appear, perhaps, a little strange to those of Western countries who have never lived and worked in China, but it is absolutely true respecting those who have come into touch with the so-called "New Culture Movement" in China. This aberration of political foresight caused by the close proximity of events and the optimism of people who in the past have come dry-shod out of the dark

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\*Mun. Council's Report, 1925, p. 62.

waters of Chinese chaos, caused the Foreign Community to overlook the importance of the resolution passed on May 27th, 1926, by the students of the notorious Shanghai University, the central association of Chinese extremists in Shanghai, to take the lead and to demand redress in connection with the death of Koo Tsung-hung killed by the Japanese overseers on May 15th.\*

May 30, 1925, in  
Shanghai.

The news about the events in Peking reached Shanghai and filled the masses of the youths with a keen desire for activity and movement, in which their indignation and patriotism could find an outlet. The excited mass of students, encouraged by success in the past, resolved to head the strike movement. After this resolution the subsequent trend of events left little to the imagination—it had necessarily to be violent and full of those wild excesses which, as we know, are common to Chinese youths, easily worked up into a state of frenzy.

It is very difficult to give an exact and, at the same time, a concise account of what actually happened on May 30th. We have at our disposal material, which is either too bulky or too brief. Out of this mass of material we select the official Police Report published in full in the "Municipal Gazette" on August 6th, 1925, and, in extracts, in the Annual Report of the Shanghai Municipal Council, 1925, which, in our opinion after very careful study, is the most impartial of all documents containing the description of the May events, and permit ourselves to reproduce it below.

"The students proceeded to put these decisions into effect on May 30th,—says this report—A section, however, including those who had imbibed the teachings of the pro-Bolshevik Shanghai University† decided to take advantage of the occasion to spread propaganda of the extreme wing of the Kuomintang. It was these who invaded the Louza District and evidence of their designs is afforded in the leaflets entitled "Beat Down Imperialism," which attacked England, America, France, and Japan as Imperialistic Powers alleging that by virtue of agreements with the Chinese militarists and in divers other ways these countries had secured control of China's sources of wealth and robbed the Chinese people. Banners carried by the students contained demands such as "Abolish Extraterritorial Rights," "Cancel all Unequal Treaties," "Oppose the Bye-Law Governing Printed Matter," "The Japanese have killed some of our Chinese so let us all rally to the assistance of our brethren."

Information of the students activities' was received at Louza Police Station about 1.55 p.m. on May 30th, 1925.

A party of European officers proceeded to investigate and in consequence of the refusal of the students to disperse, arrested three men. These were taken to the station and detained. A crowd of their colleagues followed them to the charge room, refused to disperse when called upon and demanded to be locked up also. A few minutes later Inspector Everson proceeded to Thibet Road, where other orators were delivering anti-Japanese diatribes, and arrested one who was carrying a banner bearing an anti-Japanese device. The prisoner was followed to the Station by a crowd of his colleagues who at their own request were locked up with him. The first act of violence occurred on Thibet Road at 2.45 p.m. where a large mob maltreated a foreign constable.

Six of the assailants were arrested and taken to the Louza Station. These were followed by many sympathizers who forced their way into

\**Ibid.*

†Out of 52 persons arrested on May 30th, 1925, and brought before the Mixed Court on June 9th, 1925, forty-nine were students of Shanghai University.—Crim. C., S.M.P. vs. Yang Sz-zung et al. (Mixed Court Register No. 11, 79187).

the Charge Room. They were ejected from the Station premises with considerable difficulty, but in the confusion the six men charged with assault escaped. After being removed from the charge room the crowd was forced out of the compound and retreated slowly eastwards along the Nanking Road, the Police meanwhile urging them to disperse quietly. When about a hundred yards East from the Louza Station gate, they halted and set upon two foreign Constables and tried to wrest away their firearms. The Police then used their batons. The crowd, however, got beyond control and quickly degenerated into a howling mob which pushed steadily forward shouting "Kill the foreigners." As the crowd, which had made several attempts to secure possession of the officers' firearms, was about to enter the gate of the Police Station, Inspector Everson gave some Sikh and Chinese Constables the order to fire with the result that four were killed outright and a number were wounded. Nine wounded were sent to Shantung Road Hospital by the Police, and of those, five succumbed to their injuries. The shooting had the immediate effect of dispersing the crowd and traffic became normal shortly afterwards."



## CHAPTER XI.

### SHANGHAI AND CHINA'S POLITICS, 1925.—(*Continued*).

We do not attach any particular importance to the May 30th incident. In our opinion the incident in itself was of a very trivial nature and was practically inevitable under existing conditions in China. Any other incident would have served as an excuse for the Chinese extremists to rise against the foreigners and their extra-territorial privileges and accuse them of deliberate and malicious neglect of the rightful interests of the Chinese People and the sovereignty of the Republic.

The belief in the political and social weakness of Europe and Japan, and their inability to render firm and concerted resistance in case of an energetic attack was in 1925 stronger than ever. It was strengthened by the results of the growing political power of the Labour Party in England, the Radical Cabinet in France, and her Moroccan War, the second earthquake and labour movement in Japan. It was encouraged by the general tendency of the World Democracy to regard Young China's anti-foreign movement as a deeply rooted national movement of a constructive nature.

But as far as the incident itself is concerned, we venture to repeat that it was a very trivial one, not only in the history of China but also in the history of Shanghai. It was a repetition of what had happened in 1905, with the only exception that at that time the crowd succeeded in getting the upper hand, and set in flames the unfortunate Louza Station.

Riots of 1905.

We realize the seriousness of this allegation and, therefore, we cite in full the respective report of Captain A. M. Boisragon, the Chief of the Shanghai Municipal Police, for 1905, and give our readers an opportunity to compare it with the Police Commissioner's Report for 1925.—

"The Louza Station," wrote Captain A. M. Boisragon, "was made the scene of the most determined attack, the Foreign and Sikh Police were driven in, amidst a hail of bricks and stones, after having charged the attackers a dozen times. The attack commenced at about 9.30 and lasted till 10 o'clock, when the latter obtained the upper hand, forced an entry into the station, turned out the fires in the grates of the various rooms on the ground floor, and thus set fire to the station in three or four different places. The alarm for fire was sounded at 10 a.m. and the Brigade arrived on the scene some minutes after. In the meantime the attack on the Town Hall was being pressed with vigour, but the Police there fired on the mob, killing three men in the crowd and two other innocent shop assistants sitting behind closed shutters on the opposite side of the road—an unavoidable misfortune. This somewhat cowed though did not disperse the mob, which was finally partially driven into side streets on the arrival of the landing party from the British warships in port. In addition to three Chinese killed at the Town Hall and one at the Kiangse and Nanking Road corner, three others were shot in the neighbourhood, making seven in all, but it is believed that others died from wounds received. The total number of wounded could never be ascertained."

We also draw the attention of readers to the events of 1919 described in the first Chapter of this monograph. Their nature was not

less, perhaps even more, serious than that of the events of May 30th, 1925. But neither the disturbances of 1905, nor those of 1919, were followed by any political demand, nor did they arouse Chinese indignation with regard to the methods of quelling them to such an extent as in 1925. The foreigners and the Municipal Council were not accused *en bloc* of barbarity against unarmed patriotically-spirited crowds, though the number of persons shot and wounded in 1905 and 1919 was not less than that on May 30th, 1925. It was then accepted without reservation that the primary duty of the Police was to maintain order at any cost, not stopping at the use of firearms if it was essential for the restoration of peace.

However, in 1925 things went differently. On May 31st a mass meeting was called at the premises of the Chinese General Chamber of Commerce. This meeting had to define the attitude of the Chinese residents in the Settlement *vis-a-vis* the foreigners in connection with the previous day's incident. The meeting was attended by over 1,500 people, the majority of which included students, labourers and representatives of about one hundred public organizations, such as Street Unions, Kuomintang and various other radical societies. The chair was occupied by a representative of the Shanghai Students' Union. The scene was one of indescribable excitement.

Meeting of May  
31st.

The gist of all speeches pronounced from the platform was that redress for the ill-treatment of the Chinese by the foreigners could only be secured by the Chinese people presenting a united front to the foreigners. The latter controlled the Chinese militarists and consequently the people could not expect any assistance from them. A resolution to declare a general strike was unanimously adopted, and endorsed by the delegates present of the Chinese Ratepayers' Association and Chinese General Chamber of Commerce, who handed over a draft of a document stamped with the seal of the Chamber to the following effect :

"In view of the assassination of our brethren, we have decided to go on a general strike. Shanghai General Chamber of Commerce, May 31, 14th year of the Republic of China."

In addition to this resolution the meeting approved the following terms of the general strike.—

- (1) That a boycott be declared of all foreign bank notes.
- (2) That Chinese withdraw deposits from all foreign banks.
- (3) That the control of the Municipal Police be placed in the hands of Chinese.
- (4) That foreign warships be ordered to leave the Huangpu River.
- (5) That all students and labourers in police custody be set free immediately.
- (6) That the murderers of both the labourers and students be brought to justice, and compensation be paid to all sufferers.
- (7) That the right of the labourers to organize and to strike be recognised.
- (8) That no assaults be permitted in the mills.
- (9) That hygienic conditions in the mills be improved.
- (10) That cruelty towards female and juvenile workers be prohibited.
- (11) That the use of foreign (Indian) police as watchmen in the mills be discontinued.
- (12) That the proposals of the S.M.C. relative to the By-Laws for the control of printed matter, increase of wharfage dues, and licensing of stock exchanges be opposed.

These resolutions, however, were soon replaced by new slogans of a far different nature. The pennants and banners which were borne by thousands of students, labourers and Kuomintang filling the Nanking Road on the morning of June 1st, bore inscriptions such as—"The Japanese have torn our national flag." "Abolish extraterritoriality . . ." "Cancel all unequal treaties . ." "Restore all foreign Settlements to China. . ."

June 1st and 2nd,  
1925.

The demonstration was very impressive, and not less aggressive. The police tried to disperse it by the use of the fire hose, but finally, after being stoned, had again to resort to fire arms with the result that three were killed and fourteen wounded.

On June 2nd, further troubles occurred in different parts of the Settlement. Tramways, buses, foreigners and police patrols were attacked by the mob, and the Volunteers were fired at from the roof of the "New World Theatre" just opposite the Race Course.

Prompt measures were taken to cope with the growing danger and the Council declared late in the afternoon of June 1st a State of Emergency. The mobilization of the Shanghai Volunteer Corps was ordered and Colonel W. F. L. Gordon, Commandant of the Corps, was appointed Commander of all Defence Forces in Shanghai. Measures for ensuring the continuance of essential public services and adequate food supply also were taken.

Reaction in Canton and Peking.  
First Note of the  
Waichiaopu, June  
3rd, 1925.

The news concerning the events in Shanghai did not cause an immediate indignation in other places in China. In such centres of student movement as Canton and Peking the collision between the demonstrators and Municipal Police did not cause excitement or surprise. In Canton a small group of students and workmen paraded on June 2nd, in sympathy with the Shanghai students, while in Peking the representatives of the student bodies called at the Waichiaopu demanding representations to the Diplomatic Body, and held, on June 1st, a meeting in the Central Park, which passed off in a very orderly manner. The Note of the Chinese Government, dated June 3rd, also was couched in a very moderate tone, and expressed more regret than accusation and demand for redress.

"No matter what the nature of their demonstration may have been," stated the Note, "the students being young men of good family, full of patriotism and unarmed, should not be treated, no matter what the circumstances, as ordinary lawbreakers and criminals, and that the police instead of attempting to pacify them by appropriate means had recourse to those extreme measures which are condemned both on humanitarian grounds and from the view point of justice."

The latter passage did not sound very convincing in the mouth of the Chinese Government, if one recollects the manner in which the same Government treated on similar occasions the "young men of good family, full of patriotism and unarmed,"—but the growth of anti-foreign feeling and the violent propaganda undertaken in the Press in connection with the incident, pointed to the seriousness of the situation.

On June 3rd, between ten and fifteen thousand students paraded through the streets of Peking. All colleges and schools were represented including missionary institutions. Tumult and excitement reigned throughout the city. The demonstration accompanied by thousands of the curious and loafers proceeded to the



Waichiaopu and the residence of the Chief Executive heavily protected against possible invasion. Strong pickets of police and Legation Guards guarded the approaches to the Legation Compound. Shouts—"Kill the British and Japanese. . . ." "Down with Imperialism. . ." filled the air.

The student delegates were received at both the Waichiaopu and the residence of the Chief Executive. Their demands called for apologies from Japan and Britain for the shooting in Shanghai; an assurance that they would not recur; compensation for the dead and injured students; release of those arrested; sentence of death for the responsible police; restoration to the Chinese of all concessions and the abolition of extraterritoriality. Three days later the whole country was in flames.

Meetings, demonstrations, assaults on foreigners were reported from all quarters. Even the most serious-minded businessmen like Chinese bankers in Shanghai joined in the general indignation and sent in their protest to the Municipal Authorities in Shanghai. The Peking Bankers' Association passed a resolution that Chinese banks should contribute to the Shanghai workers who were on strike. Marshal Feng Yu-hsiang published an open letter to all Christians denouncing the policy of Treaty Powers in China and declaring readiness to fight the British imperialists. Marshal Chang Tso-lin, though reluctantly, had also to admit that the Shanghai incident was a gross insult to China, while the Cabinet instructed the Ministries of Finance and Communication to find means to support the strikers.

The tide of the movement was reaching the height of a general revolution, frustrating the last endeavours of the Government to maintain a semblance of order in the country.\* Two High Commissioners, Admiral Tsai Ting-kan and Mr. Tseng Tsung-chien, the Vice-Minister of Foreign Affairs, were hastily despatched to Shanghai to investigate the incident and devise means to settle the matter on the spot.

In effect, the matter needed a thorough investigation. Wild rumours and gross exaggerations were creeping around poisoning the atmosphere and colouring the whole affair with an aspect of a wholesale cold-blooded massacre of unarmed Chinese youths by the Municipal Police.†

On June 6th, the Diplomatic Body handed to the Waichiaopu a Note informing the Chinese Government that the Powers had given renewed and specified instructions to the Municipal Police in Shanghai concerning the use of arms only in cases of extremity, and that the Diplomatic Body was sending a delegation to Shanghai to investigate and report. The delegation was to leave on July 8th.‡

Diplomatic  
Body's Note,  
June 6th, 1926.  
Appointment of  
Diplomatic Inves-  
tigation.

\* Marshal Tuan Chi-jui's circular telegram to the provinces, dated June 6th, 1925, announcing the appointment of a Special Commission to investigate the shooting affair on the spot, and urging merchants and students to attend to their own business and await results of the diplomatic negotiations.

† Commissioner for Foreign Affairs to the Consular Body, May 31st and June 1st; Consular Body to the Commissioner, June 6th, 1925.

‡ It was announced that the Diplomatic Delegation were to be composed of Messrs. S. Tribler, Counsellor of the French Legation, G. G. M. Vereker, First Secretary of the British Legation, F. Gerry Greene, First Secretary of the U. S. Legation, M. Shihemitsu, First Secretary of the Japanese Legation, J. Ullenes de Shooten, First Secretary of the Belgian Legation, and G. Scaduto, First Secretary of the Italian Legation.

The investigation of the incident was also urged by a certain section of liberal Chinese who advocated the constitution of a mixed commission of inquiry "composed of impartial Chinese and foreign representatives to conduct jointly a free and full investigation of the circumstances of the killing, in order to determine where the responsibility really lies, and to make a report, which shall be the basis for arranging a settlement and a redress of the wrong in full measure."\*

On June 12th, the Dean of the Diplomatic Body at Peking handed to the Minister of Foreign Affairs a *communiqué*, which reflected exactly the same views.—

"The interested Powers," stated this communiqué, "animated by a lively desire to see solved as soon as possible a situation both distressing and full of dangers, have reached the belief that the most appropriate means of establishing law and order in Shanghai would consist of discussing on the spot the measures to be adopted, taking into account the local situation.

"My colleagues and I have consequently given the necessary instructions to our delegates in Shanghai to consider with the Consular Body and the delegates of the Chinese Government the best means of finding a remedy for the state of affairs, which all deplore."

The terms of the settlement, however, were already predetermined long before both delegations arrived in Shanghai. With the usual swiftness characteristic of a Chinese movement, a powerful body called the Shanghai Union of Commerce, Labour and Education sprang into being and assumed the leadership of the strike and anti-British boycott. Together with the Street Unions, the National Chinese Students' Federation and the Shanghai Chinese Students' Union, it framed at the meeting of June 6th thirteen demands for presentation to the Municipal Council. These demands, after a slight amendment, were approved by the Chinese General Chamber of Commerce, published for general information, and solemnly proclaimed by the Chinese press as "just and reasonable" in the circumstances.

These demands or, better to say, terms of settlement of the strike and boycott are known to everybody, but for the sake of completeness of our record, we give them here in full.

Thirteen Demands for the Settlement of the May 30th incident.

- (1) Cancellation of State of Emergency.
- (2) Release of all Chinese arrested in connection with this affair and restoration to original state of all educational institutions in the International Settlement sealed and occupied (by the authorities).
- (3) Punishment of offenders. To be suspended pending investigation and thereafter to be seriously dealt with.
- (4) Compensation for the dead and wounded and for the damage sustained by the labourers, merchants and students in connexion with this affair.
- (5) Apology.
- (6) Rendition of Mixed Court. Complete restoration to the state consistent to the provisions of the treaties.
- When any Chinese is prosecuted under the Criminal Code of the Republic of China or under the Municipal By-Laws, the prosecution shall be in the name of the Republic and not in that of the Shanghai Municipal Council.
- (7) All the employees of the foreigners, seamen and workers of mills or factories and others who turned out on strike in sympathy shall

\*Messrs. Liang Chi chao, Chu Chi-chien, V. K. Wellington Koo, Chang Kuo-kan, Fan Yuan-lin, Li Shih-wel, Hollington K. Tong and V. K. Ting, Tientsin, June 7th, 1925.—"North-China Herald," June 13th, 1925.

be reinstated and their wages during the period of the strike shall not be deducted.

(8) Better conditions for the labourers. Any labourer may work or not of his own accord and shall not be punishable for refusal to work.

(9) Municipal Franchise.

(a) The Chinese may participate in the Municipal Council and ratepayers' meetings. The ratepayers' representation in the Council shall be in proportion to the amount of the rate payable and paid to the municipal revenue and the qualifications for franchise (of the Chinese) shall be similar to those of the foreigners.

(b) For the purpose of the franchise, distinction shall be made as to the beneficial and trust (or legal) interests of property: with the beneficial interest, the right of franchise shall accompany and in the case of the trust interest, such right shall be exercised by the beneficial owner thereof.

(10) Restraint to construct roads beyond boundaries. The Shanghai Municipal Council shall not construct roads beyond the Settlement boundaries; those roads which are already so constructed shall be unconditionally turned over to the Chinese Government.

(11) Withdrawal of the resolutions concerning printed matter, increase of wharfage dues and licensing of exchanges.

(12) All Chinese residents of the Settlement shall have liberty of speech, assembly and publications.

(13) Dismissal of the Secretary of the Municipal Council, E. S. B. Rowe.\*

Thus the delegations were on their arrival confronted with a *fait accompli*, which could not be ignored by either of them. The terms were even obligatory for the Chinese delegation as a *vox populi*, notwithstanding the fact that they were obviously unacceptable to the delegates of the Diplomatic Body as exceeding their power.

It was the most critical moment for the Peking Government when it had to define clearly its relation to the movement. A moment when the Peking Government had either to join it and let itself be carried away by its flood, or to oppose it and confirm once more the righteousness of the popular conviction that it was a "running dog of the foreign capitalists and imperialists."

On June 16th the Chinese delegation handed to the delegates of the Diplomatic Body the thirteen "terms," the sixth (Mixed Court) and the ninth (Municipal Franchise) of which were considered by the Chinese Chamber of Commerce as the "primary and fundamental causes of the trouble."†

Handing over these "terms," the Chinese delegation stated, in a form near to an ultimatum, that "unless these points were not settled at once they would always be stumbling blocks to friendly intercourse between the Chinese and foreigners in Shanghai."‡ The causes of the deplorable incident were much deeper than the foreigners think and, therefore, the settlement of the incident should be prompt and radical.

Instructions given to the Diplomatic Body's delegates were strict and precise. They had to investigate the incident and endeavour to find an immediate solution of the difficulties, which

\*Resigned from the Council's service in December, 1925.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 128-130.

‡Official Statement of the Delegates of the Diplomatic Body, June 18th, 1925.



were the direct outcome of the May 30th affair. The psychological side of the issue was naturally ignored.

Meanwhile, the psychology of the movement was the most important part of the whole problem to be dealt with by the delegates, and by any other body, which might undertake the task of investigation and solution of the difficulties.

Diplomatic Commission's investigation, July, 1925

In fact, it appears from the report of the delegates of the Diplomatic Body\* that the attention of the delegates was entirely absorbed by the immediate circumstances of the May 30th affair and the actions of the Municipal and Chinese police. The latter were subject to a very minute scrutiny, and the delegation arrived at the conclusion that one of the primary causes of the whole incident was the negligence displayed on the part of the Chinese authorities, from the highest downwards. This fostered the development of agitation of which the regrettable events at the end of May were the inevitable outcome.

As far as the actions of the Municipal Police were concerned, the delegates found that the Municipal Police was well informed about the situation within and outside the Settlement, and that "by reason of the instructions contained in the 'Memorandum for Guidance in case of Serious Trouble in the Settlement' and of the behaviour of the crowd, Inspector Everson, the Police Officer in charge of Louza Station, might have believed himself obliged to fire."

Dealing further with this subject, the delegates stated in their report that "*a doubt exists in the minds of the Commission as to whether reinforcements of the police might not have been given him (Inspector Everson) in advance or brought up in time to keep the crowd under control and prevent the necessity of firing.*"

Thus the conclusions of the delegates with regard to immediate actions of the Municipal Police were definite. The actions of Inspector Everson did not contain anything which required further investigation. "Shoot to kill"—a phrase stated by Inspector Everson at the trial of students in the Mixed Court, which roused the Chinese public—was just a phrase seized upon out of a set of detailed regulations drawn up in accordance with the existing regulations and orders dealing with the suppression of riots and insurrections in Great Britain. They were not repugnant to the respective regulations of other countries and the provisions of Art. 4 and 7 of the "Regulations governing the use of Police Weapons," promulgated in the President's Mandate, dated March 2nd, of the 3rd year (1914) of the Chinese Republic.

"The reasons for those particular words,"—stated Major A. H. Hilton-Johnson, the Commissioner-General of the Shanghai Municipal Council, in reference to the expression "Shoot to kill or disable" contained in the Police Regulations, at the session of the International Judicial Inquiry, October 24, 1925.—"in regard to fire action by the police is as follows: Unlike police forces elsewhere, particularly in Great Britain, the Shanghai Municipal force is provided with firearms as part of its normal duty equipment. Great care is taken by the Council to provide the best equipment available in that respect. Great care is also taken and a considerable amount of money is expended in teaching men of all branches of the force

\*Report of the Diplomatic Commission.—See Appendix.

to shoot straight. *Ipsa facto*, therefore, I submit that the authorized discharge of firearms by policemen in the course of their duty denotes the extreme probability of damage or death to some third party. However you may regard the matter, I think you cannot get away from the fact, and as it was a fact, I did not see any reason to disguise it. If you do not want a policeman to kill or seriously injure anybody else, don't give him a gun; but if, on the other hand, you do give him a weapon of which the principal function is to kill or seriously injure, you cannot call the policeman responsible if that function is fulfilled. For that reason, in making out these Mobilization Instructions in 1914, I put the matter beyond all doubt by laying down specifically that if the conditions under which fire action was permitted at all had been fulfilled, then the object of such fire action was to kill or disable the person or persons fired at."

It is hardly possible to deny the logic of this conception, particularly taking into consideration the peculiar conditions in which the police in Shanghai has functioned since its very establishment. And the remedy left to the aggrieved party under these circumstances lay obviously in bringing a suit against the officer in charge of the firing squad, and in trying to establish that "*the conditions under which fire action was permitted*" had not been fulfilled.

No such an action, however, was ever brought before any Court, though the Consular Body expressly stated in its dispatch to the Commissioner for Foreign Affairs, June 6th, that "*the competent Courts stand ready to deal with any complaints*," and though these Courts, in the present case, H.B.M.'s Supreme Court for China and the Court of Consuls, could hardly arouse the slightest doubt in the mind of any Chinese as far as their integrity and justice were concerned.

It seemed that the actions of Inspector Everson were justified in law even in the opinion of those who were accusing him, and it was too risky on their part to place the matter before a judicial tribunal such as H.B.M.'s Court, which is internationally famed for its fair-play and equity even in matters affecting British national interests, or institute proceedings for damages against the Council in the Court of Consuls.

As far as the point regarding the reinforcements, which aroused doubt in the mind of the diplomatic delegates, was concerned, it could of course form a subject of different conjectures, but still it did not alter the position in regard to the actions of the firing squad.

Meanwhile if one takes into consideration the psychology of the whole movement since its early days, if one admits for a moment that the movement was not only a movement of exalted Chinese youths far from the actual national aspirations and the result of extremists' influence, but a movement deeply rooted in the national conscience of the country, the actions of the Council and its agents in taking forcible measures against the rioters, might appear as a very serious *faux pas*, which placed the entire cause of foreigners in China in a dangerous position.

It might even appear to some unscrupulous diplomats more serious than a simple *faux pas*. The Council instead of seizing the opportunity of compromising Young China in the eyes of the entire world by permitting the mob to set fire to the Louza Station and loot the adjoining Chinese emporiums, quelled the riot on the spot.

No doubt it was very honest on the part of the Council not to sacrifice personal safety and property in the interest of foreign politics in China, but still it was an inexcusable lack of foresightedness which exposed the foreigners to accusations of misusing their extraterritorial privilege, the main thorn in the flesh of the Chinese.

The thirteen demands advanced by the Union of Commerce, Labour and Education and the Chinese General Chamber of Commerce were just a reiteration of the terms set out in the Memorandum presented by the Chinese Delegation at the Versailles Conference in 1919\*, and the gist of the Ten Points submitted to the consideration of the Washington Conference in 1922. They formed an integral part of the problems of extraterritoriality and required only a touch to embody this problem in toto.

China's demand  
for readjustment  
of treaty relations.  
Notes of June  
24th, 1925.

On June 24th, 1925, the Chinese Government sent in a reply to the *communiqué* of June 19th, which announced the readiness of the Treaty Powers to discuss "both organizations of the International Settlement and the administration of justice therein." There were two Notes. The first Note contained the request for "the readjustment of China's treaty relations on an equitable basis in satisfaction of the legitimate national aspirations of the Chinese people," and stated that—

"The Chinese Government is firmly convinced that with all nations not only can their relations with China be made more cordial, but their rights and interests can be better protected and more effectively advanced without rather than with the enjoyment of extraordinary privileges and immunities."

The necessary touch was added. The local question was transformed into an international problem embodying the entire issue of foreign extraterritoriality in China.

The second Note contained the famous thirteen demands and, thus, formed a preamble to the issue which confronted the foreigners in China.

Diplomatic In-  
quiry Commis-  
sion, July, 1925.

In effect, when the Diplomatic Inquiry Commission composed of Ministers of Italy, France and America approached their task, they had already before them the whole problem of Sino-foreign relations.

A detailed analysis of the popular movement, which backed it, added further weight to the issue and extended automatically the subject of the discussion of the Commission far beyond the strict limits of the *communiqué*.

The "New Culture Movement" of Young China was no longer the formless movement of 1919. Its slogans did not seem to be incomprehensible to the masses and repugnant to the interest of the State. The movement was recognized and supported by merchants, labourers and soldiers, from marshal down to private. Its aims were sanctioned by the Government, which declared them to be legitimate and highly patriotic. It seemed that only the smallest endeavour was needed to compel the foreigners also to recognize its national character and upset wholly their political attitude towards China. Then, of course, the presumption which we had made in regard to the responsibility of the Municipal Council in Shanghai would have immediately become apparent.

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\*See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 37-40.



On July 10th, the telegraph brought information that the French Minister, Comte M. de Martel, had resigned from the Commission on account of a disagreement with the views of H.B.M.'s and American Ministers on the status of the Shanghai Municipal Council. It appeared that the latter as an Executive Council of a self-governing community refused to recognize the right of the Diplomatic Body to interfere with its functions and censure or suspend any of its agents. The details of this affair remain up to the present time very obscure, but it transpires that the Commission was inclined to hold the Council and its agents responsible for the shooting affair, attributing it to the lack of political foresightedness and general negligence on the part of the Council in not taking steps in preventing the fatal collision by a prompt dispatching of reinforcements to the scene of the disturbances, as indicated in the report of the diplomatic delegates.

The position of the Council was very difficult. It was better aware than anybody else of the real nature of the movement and the national character which it had assumed during the last two years. But it could no more assume the responsibility for all mistakes committed in the past by the foreigners in China, for the weakness of the Treaty Powers and inability of their diplomacy than it could for the magic influence of the Communist political doctrine upon the mind of the Chinese.

Question regarding the status of the Municipal Council.

As a matter of fact, it has been the only foreign body in China, which, under no circumstances, let itself be carried away by any emotional tide, realizing fully that any incautious move on the part of the foreigners or immediate concession to the agitated masses, which could be interpreted as a further sign of weakness, would be fraught with irreparable consequences for both Chinese and foreigners. In this respect the Council as a body was by far morally stronger than the Diplomatic Body at Peking, which virtually presented a small isolated island amid the roaring Chinese element. The Council's motto was that of a sober-minded businessman far from any politics, and its weight and authority in the eyes of the Chinese people was based on principles of commerce, which did not require for their maintenance any particular political power or soundness of social order in any of the countries whose citizens formed the heterogeneous population of the Settlement.

It is true that the Council as a body was deprived of the privilege of direct intercourse with the Chinese authorities, but still, as a body, it was independent by virtue of its charter.

In effect, the entire history of the evolution of the foreign municipal self-government at Shanghai, except that of the French Concession, which is entirely subject to the authority of the French diplomatic representatives in China, is a continual chain of more or less successful endeavours on the part of the Council and the Rate-payers to liberate the Foreign Community from dependence upon unsteady international politics.

In 1854, when the old Land Regulations of 1845\* were replaced by a new set forming the basis of the present status of the

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\*Meeting of Foreign Landowners, July 11th, 1854, "North-China Herald," July 8th, 1854.

International Settlement, Sir Rutherford Alcock, then H.B.M.'s Consul in Shanghai and initiator of the reform, laid particular stress on the unsatisfactoriness of the consular guardianship over the community in all matters pertaining to the protection and safety of the Settlement. The Foreign Community was invited by him and his French and American colleagues to form an independent body capable of protecting itself without requiring any particular assistance from their national governments. These governments were often deprived of the possibility of rendering such a protection without arousing political complications of international character. The community was invited to participate as an active party in the arrangements which were to be made between the Treaty Powers and the Chinese Government by adopting them by a public vote in the form of a new set of Land Regulations.

The same procedure had been also followed in framing the Land Regulations of 1869 and 1898, while the respective Governments reserved for themselves only the right of calling through their Consuls the ratepayers meetings; approval of resolutions, passed by these meetings and affecting the general interests of their nationals; approval of any further requisite amendments of Land Regulations, if any; the procedure of settling this matter with the local Chinese authorities and the Supreme Chinese Government at Peking.

None of the three sets of Land Regulations, 1854, 1869 and 1898, contains the slightest hint of the right of Treaty Powers or their Diplomatic Representatives in China to alter their provisions, increase or decrease the power vested in the Council, without the consent of the Ratepayers thereto. Since 1854 and up to the present, the Land Regulations form in their very nature a tripartite agreement entered into between the Treaty Powers, the Chinese Government and the foreign ratepayers as a body.

These regulations are based on the principles of the Treaties, which they embody, but as a whole they form a kind of separate international treaty, the only difference of which from any other treaty is that it requires in order to become binding upon the community subject to its provisions, the express and irrevocable consent of the same community in a public meeting assembled to abide by this treaty.\*

In this connection it is interesting to cite some of the opinions expressed by the leading Western jurists just at the time of germination of the Shanghai self-government.—

"If times and the progress of events," stated Sir Edmund Hornby in 1865, referring to the rights of the Municipal Council, "should now suggest alterations in the working of that system, the principle will remain untouched, a greater development being all that is required. The authority, as it should, will still emanate from the representatives of the Crown, and so long as the Committee of the Land Renters, or the Municipal Council, or by whatever name they may be

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\*The independent character of the constitution of the International Settlement and its Land Regulations find their indirect confirmation in the Protocol of September 7th, 1902, Annex No. 17, in which the Municipal Council was invited to elect a member of the Whangpu River Conservancy Board.—J. V. A. MacMurray, Vol. I, p. 302.

called, limit as they have hitherto done their action within the sphere of the powers conferred upon them, they have in my opinion a legal status, and are a *legally constituted body possessing the chief and material, if not all, the requisites of self-government.*"\*

Whilst Mr. George E. Seward, U. S. Consul-General, stated in 1875 as follows :

"To this I answer that, while foreign Courts can enforce the Regulations [Land] as the right and proper issue of the territorial sovereignty which the foreign governments have approved as such, foreign officials must in their political capacity defend the Regulations and claim that they shall be held intact, as being part of an *agreement or contract entered into between the sovereignties involved. They have been solemnly framed and promulgated. Properties have been bought and moneys have been invested under them. The comfort, convenience, health and good order of a vast population are at stake. Under these circumstances, many cogent considerations can be adduced in defence of the Regulations and against the right of the Chinese to abrogate or change them without our consent.*"†

Under these circumstances and in the light of political events of 1918-1925, it was quite natural on the part of the Municipal Council to try to ascertain its rights and to draw a line of demarcation between the matters affecting immediately the Foreign Community and questions relating to political intercourse between the Treaty Powers and China.

Advancing the aforesaid conception, the Council did not try to use it as a means of avoiding responsibility for the May 30th incident, or shelter its agents guilty of criminal negligence or acts *ultra vires*. The Council was bound to do that in order to clear the matter in the face of the apparent trend of political events in China and her relations with the Treaty Powers. It was also bound, as an independent body, to insist upon an impartial international inquiry into its actions, for it was not only responsible to the Treaty Powers from whom it derived a part of its authority but also to the Chinese Government and population, which had settled in the Settlement on the presumption that its safety would be properly protected by the Municipal authorities. Furthermore, the Council had also to reckon with any manifestation of a Chinese national movement, for its policy during its entire history was in no way connected with the slightest attempt to hamper it, even if this could serve the interests of any of the Treaty Powers.

The International Settlement at Shanghai has always remained an international institution, neither British, Japanese, American nor any other nationality, including Chinese, who have not less than any other nationality enjoyed liberty and safety under the protection of the Foreign Community as a body and the Council as its executive.

In this sense the position of the Council was understood in London, Washington, Paris and Tokio, and while the Diplomatic Inquiry Commission at Peking sought in vain for an outlet from the deadlock into which it was thrown by the resignation of the French Minister, the respective Powers announced their intention to establish an International Inquiry into the Shanghai incident as a

International  
Judicial Inquiry.

\*Case *S. M. C. vs. Well & Co.*, British Supreme Court, 1865.—"Shanghai: Its Mixed Court and Council"—1842-1924, p. 18.

†*Ibid* p. 21.



Restoration of  
order in Shanghai.

preliminary condition to diplomatic negotiations concerning the problems advanced by the Chinese.

On the other hand, being primarily interested in the speedy restoration of normal conditions in the Settlement without regard to any international problems, the Foreign Community as a body and its Executive Council tried to find some practical means to stop the progress of the strike.

The general situation in Shanghai was far from being alarming to the same extent as in Peking and in other Treaty Ports. Prompt and stern action on the part of the Municipal authorities checked the isolated acts of violence which, after the prohibition of processions and meetings, replaced the latter.\*

Again it appeared that the Council was the only foreign body in China capable of actively using its power without infringing the existing Treaties, and while the Diplomatic Body had to resort to the usual and hopeless procedure of sending notes, it disposed freely of its defence forces and consolidated the disjointed actions of various naval detachments landed for the purpose of protecting the citizens of the Treaty Powers.

The Chinese hongts and shops, following the resolution of the Chinese General Chamber of Commerce, re-opened their doors on June 26th. This resolution recognized the immense losses incurred by the stoppage of business to the Chinese merchants, but the industrial strike continued and it was only in the concluding days of July that any material improvement was noticeable.

"On July 1st the workers on strike numbered about 80,000," states the Police Report for July. "These included almost all the operatives of British and Japanese cotton mills and tobacco factories, the crews, with few exceptions, of British and Japanese-owned tugs, lighters and launches, the longshore men on wharves owned by companies of the same nationality, the printers of the principal foreign newspapers, about ninety per cent. of the washermen engaged in foreign work, large numbers of the seamen on British and Japanese ships, over 300 employees of the Shanghai Waterworks, all the Chinese operators in the Shanghai Mutual Telephone Co., about 1,300 tradesmen and labourers belonging to the Electricity Department of the Council, and 1,650 fitters, linesmen and traffic hands in the Shanghai Electric Construction Co., Ltd."

A glance through the official report induces the conclusion that if the main sufferers from the cessation of trade were Chinese shopkeepers and retail merchants, the main sufferers from the industrial strike were the foreigners. Their competitors, the Chinese in-

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\*Although the Fengtien Military Authorities have so far failed to take effective action against the leaders and agitators of the strike, yet it was apparent that they were far from sympathising with the general disorder which the strike brought along with it. Anyhow, the Police Report for July states that "they always responded promptly to requests by the Municipal Police for co-operation in securing the release of workers [municipal] held by kidnappers." Furthermore, the Military Authorities issued proclamations condemning "lawlessness and warning malefactors that crimes against Martial Law, which was proclaimed in June, would be severely punished, even to the extent of imposing the death penalty." On July 23rd, General Ying Sz-tien, the Chief of the Shanghai Woosung constabulary, ordered the sealing up of the premises of the General Union of Labour, Commerce and Education, the Chinese Seamen's Union and the Foreign Employees' Union and the arrest of fifteen officials connected with them. This action on his part aroused indignation amongst the extremists and under pressure brought to bear upon the higher Authorities, he was finally compelled to re-open two of the places he had sealed and release nine of the terrorists from prison. However, the measures taken by the Military Authorities, according to the statement of the above-cited police report, produced some good results, alleviating the general situation.—AUTHOR.

dustrialists, who sponsored the strike out of patriotic motives, derived out of it immense profits.

Under these circumstances there was very little hope of seeing normal conditions in the Settlement soon restored. The only way of altering the situation was to make the Chinese industrialists participate in the general losses of the whole commercial community. It was a very risky step, which the Council decided to undertake, for it endangered the future operation of the greatest municipal enterprise, the Electricity Department, but it was the only possible one and was forced upon the Council by circumstances.

In fact, the continuation of the strike amongst the employees of the Electricity Department, whose work was maintained with difficulty by the foreign staff and hastily recruited Russian labourers, caused the Council to look for some means to reduce the output of electricity without disorganizing entirely the life in the Settlement.

On July 6th, the Council announced the suspension of the power supply for industrial purposes. About 40,000 additional workers were thrown out of employment.

The interested Chinese millowners appealed to public opinion and placed the responsibility for "the consequences of throwing out of work a vast number of labourers at the present precarious moment," on the Council,\* but the industrial strike received a deadly blow. It was deprived of the powerful support of the Chinese industrialists, who, in spite of all their efforts to overcome the difficulty due to the suspension of power supply, were only able at the end of July to replace temporarily about one third of the electric current with power from oil or steam engines.

The increase of the number of workers depending on doles distributed out of the strike fund† raised by the organization of anti-foreign theatrical performances in the native territory, collections amongst Chinese residents in Shanghai and other parts of China and foreign countries, and received from the Peking Government and labour organizations of the U.S.S.R.,‡ had also its effect on the strike movement. The Chinese press reported that the General Labour Union stated that the funds for the support of labourers on strike were becoming speedily exhausted. In view of this state of affairs the General Union of Labour, Commerce and Education, which headed the movement, decided to bring to bear pressure upon the Chinese General Chamber of Commerce and make each member of the committee of the Chamber contribute \$1,000 and other members \$100, but the Chamber displayed great reluctance in answering this demand. Even the usual intimidation failed to bring about the desired effect. The merchants were apparently tired of the strike, the continuation of which now threatened them with losses.

The administration of the strike funds by the Labour Relief Committee also did not arouse particular confidence. Rumours were current that large sums were being appropriated by the leaders

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\*Chinese Cotton Millowners' Association to the Municipal Council, July 7th, 1925.—Mun. Council's Report, 1925, p. 73.

†On July 31st, 1925, the number of strikers was estimated at 96,000.—Police Report, July 1925, *ibid* p. 72.

‡*Ibid* p. 50.

and this created strong dissatisfaction not only amongst the merchants but also amongst the strikers. And whilst the anti-British and Japanese boycott and strike was still in full swing in all other Treaty Ports and Hongkong, after the June 23rd conflict in Canton, the way for an understanding between the foreigners and Chinese appeared to be paved in Shanghai.

Settlement of the strike.

In effect, on August 11th, Mr. Yada, the Japanese Consul-General at Shanghai, Mr. Hsu Yuan, the Commissioner for Foreign Affairs, and General Shing Shi-lien, the General in command of the Fengtien troops stationed at Shanghai, met together to draw up an *aide memoire* for the settlement of the strike. These officials did not represent formally the respective parties, yet their informal discussion of the situation led to certain terms being adopted, in the first place, as a basis for the settlement of the seamen's strike.

These negotiations were soon followed by analogical conferences between the Chinese authorities and the leaders of the industrial strike, and while new attempts of intimidation were made by the latter to prevent an early resumption of work, it was apparent that the movement was approaching its end.

On August 10th and 13th, a number of strikers tried to stop the work of some of the Chinese steamship companies in Chinese territory. The Chinese Chamber of Commerce was once more forced to contribute to the strikers' fund but the disappointments previously experienced\* had dissipated whatever enthusiasm had existed for a further continuation of the strike. The return to work became general towards the end of August and soon the conditions had reached a normal basis on the wharves in the Settlement, though some of the British ships were still operated by casual workers, and were unable to observe their normal schedules.

This had a decided effect on the general situation, and some of the Japanese mills also resumed operation. Towards the end of August the tension was so far relieved as to justify a discontinuance of most of the emergency measures, and a proclamation, issued on August 28th, terminated the State of Emergency in the Settlement.

However, the energy and resources of the leaders of the strike were by no means exhausted. There remained still on September 1st over 69,000 workers on strike, out of which over 56,000 had gone back by the end of the month, and arrangements were made for the return to work of the majority of the rest.

On September 9th, the Municipal Electricity Department resumed the supply of power, and, though the intimidation and agitation proceeded, and some concerns experienced fresh troubles, mostly of an economical nature with their employees, the strike could be considered as having been brought to an end.

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\*"The intimidation of employees of Chinese companies and robbing of food shops continued on August 12th, when about 2,000 strikers engaged in this depredation paraded the Chinese Bund. Further lawlessness took place on August 13th, when a band of recalcitrant strikers smashed the furniture in the Chinese Seamen's Union and robbed numerous food shops in the vicinity of the North Gate. The Chinese Police at the former place were obliged to resort to the use of firearms in order to disperse the rioters, of whom six were arrested. Strike gratuities were distributed among 12,000 wharf coolies on the afternoon of the same date at the West Gate. Some, who had received no previous benefit, were given \$4 each and the others were paid \$3 each. This money was disbursed in response to a demand addressed the previous day to the Chamber of Commerce, North Honan Road, where a crowd of 5,000 strikers assembled to press their claims."—Mun. Council's Report, 1925, p. 74.



Nevertheless, on September 7th, the Police again had to resort to the use of firearms in dealing with disorder arising out of the observation of the anniversary of the signing of the Treaty imposing the Boxer Indemnity, one of many days of the so-called "China's National Humiliation," but, indeed, it was the last convulsion of the dying movement.\*

In all its endeavours to restore peace and order in the Settlement the Council was assisted by the entire Foreign Community irrespective of its cosmopolitan character, and while the Council was prevented by the diplomatic negotiations at Peking from solving problems connected with the strike through direct intercourse with the Chinese public organizations, the leading foreign bodies attempted to pave the way for mutual comprehension and reconciliation.

The initiative of this attempt belonged to the Committee of the Chinese Compradores of Foreign Firms at Shanghai, who requested Mr. A. Brooke-Smith, the Chairman of the Shanghai General Chamber of Commerce (foreign), to call a meeting of the different local foreign Chambers of Commerce and discuss the situation. In its turn, the Committee promised to approach the Chinese General Chamber of Commerce with a view to the same object.

This attempt failed. The Chinese Chamber of Commerce refused to enter into any parley.† Its attitude was irreconcilable. The resignation of the French Minister from the Diplomatic Inquiry Commission and the mystery which surrounded the findings of the diplomatic delegates in Shanghai inspired the Chinese with a keen assurance of a complete victory over the foreigners.

On August 17th, the Shanghai Chinese General Chamber of Commerce forwarded to the British, French, American, Italian, Japanese and Belgian Legations a protest against the proposal of holding an International Judicial Inquiry into the Shanghai affair :

Chinese protests  
against Inter-  
national Judicial  
Inquiry.

"The Commissioners (Delegates of the Diplomatic Body) were deputed by the six representatives of their respective countries for the transaction of diplomatic business. It follows that their report embodying the result of their investigations commands the absolute confidence of their respective Governments, as well as the Chinese Government.

"We now understand that the six Powers propose to appoint another judicial commission in connection with the incident in question. This Chamber considers such a step to be in conflict with the universal practice among accredited diplomatic officials, inasmuch as it confuses in one breath diplomatic and judicial procedure."

\*The occasion was celebrated in Chinese territory by a mass meeting and procession. After the celebration there finished, a crowd of several hundreds of the participants crossed the French Concession and with flags unfurled (the flags bore inscriptions such as: "Let us overthrow militarism"; "Let us overthrow Imperialism," "Let us cancel all unequal Treaties," "Give us back the Settlement," "Restore Mixed Court to China," etc.) marched in a body northwards through the Settlement. They were met on Honan Road by a party of Police from the Central Station who, after considerable difficulty, pushed them back to the south side of Avenue Edward VII. From this vantage point they threw stones, bamboo poles and other missiles at the Police, several of whom received slight injuries. After this, the crowd made a further attempt to enter the Settlement. The Police endeavoured to repel the attack with their truncheons, but were overpowered and knocked down. Seeing the lives of their comrades in imminent danger, two constables opened fire. This caused the mob to retreat to the French Concession where they were dispersed by a party of the Concession Police.—Mun. Council's Report, 1925, p. 75.

†Compradores of Foreign Firms to Mr. A. Brooke-Smith, June 10th and 19th; Mr. A. Brooke-Smith to the Compradores of Foreign Firms, June 10th, 17th, and 22nd; Chinese General Chamber of Commerce to the Compradores, June 19th, 1925.—"North China Herald," July, 11th, 1925.

On the other hand, the Chinese Government, which, after the failure of the Diplomatic Delegation to settle the matter on the spot, was not particularly enthusiastic to conduct negotiations with the Diplomatic Inquiry Commission in Peking, was also opposed to the idea of an international inquiry into the Shanghai incident. In reply to the Note of the British Minister of September 1st, informing it of the contents of the telegram received from H.B.M.'s Secretary of State for Foreign Affairs regarding his reply to the Chinese Chargé d'Affaires in London on the subject of the judicial inquiry, it declared that:—

“It is not without reason to assert that there should be a public and impartial inquiry on judicial lines to establish the facts and provide a basis for appropriate action. But to attempt to apply such to the Shanghai incidents, attention must be drawn to the fact that with the lapse of time most of the requisite evidence is now unobtainable and has disappeared. Further, since the case has already been very carefully investigated by the Chinese Government and the diplomatic delegates, its merits have already been well established. To propose to conduct a judicial inquiry of re-investigation after the lapse of more than three months would seem to ignore the above facts in their entirety and would, it is feared, only serve the purpose of complicating the issue.”\*

Thus, it appears, anyhow on the surface, that the attention of the Treaty Powers and the Chinese Government was still fixed upon the unfortunate incident of May 30th, while it was obvious that the centre of gravity had long since shifted to the question of adjustment of the Chinese demands as a compensation for their “moral and material damages” sustained through the “unjustified” actions of the municipal authorities at Shanghai.

Resolution of the British Chamber of Commerce and the China Association, August 31st, 1925.

The climax was reached when the British Chamber of Commerce and the Shanghai Branch of the China Association courageously attempted to cut the diplomatic Gordian knot.

On August 31st, a joint meeting of these organizations was held in Shanghai and the following resolution was unanimously passed:—

“That this meeting publicly declares itself in favour of prompt action being taken to give effect to the decisions of the Washington Conference and of the adoption by the representatives of the various Governments concerned of a point of view sympathetic towards the suggestions which China may have to make in regard to the application of those decisions;

“That it also gives public expression to its support of the principle of direct Chinese representation on the Municipal Council of the International Settlement and of rendition of the Mixed Court, and to its hope that the negotiations which it understands are now proceeding in Peking on these questions will be brought at an early date to an issue satisfactory to all parties;

“That it tenders to the Chinese community in Shanghai an expression of its earnest hope that it will accept this resolution as evidence that the misconceptions alluded to above, amongst which is the belief that British merchants are unsympathetic towards China's national aspirations, are without foundation.”

Frankly speaking, there was no room left for any further overburdening of the issue. The Community, including the most interested section of it, expressed itself in favour of concessions to the Chinese, passing silently over the May affair as a matter already disposed of.

\*Walchlaopu to H.B.M.'s Minister in China, September 21st, 1925.

Yet there were two points which made it impossible to proceed with the solution of the problems on the lines suggested by the leading foreign bodies in China.

International  
Judicial Inquiry.

The first point was the question concerning the status of the Foreign Municipality at Shanghai, and the second public opinion in England, which eagerly watched the progress of the anti-British movement in China. The latter, of course, could not be satisfied with official explanations of the Cabinet based on confidential reports of the Diplomatic Delegation and the Commission of Three Ministers, none of whom was even British.

"Let me say at once," stated Mr. Austen Chamberlain, Secretary of State for Foreign Affairs, in his famous speech in the House of Commons, on June 18th, 1925, which defined Great Britain's policy in connection with the conflict, "that His Majesty's Government and the other Governments concerned remember in these matter as that *it is an international body which is acting in Shanghai* as it is an international body, the Diplomatic Corps, which is acting in Peking, and that they are acting with more knowledge than any of us have here at the present time, under circumstances of responsibility of which no one here can relieve them, and let us give them the credit which we would ask for ourselves for moderation, for humanity and for a desire to bring a peaceful issue out of these disastrous troubles. *It is in these circumstances we all of us feel that into the circumstances there should be the fullest and frankest inquiry (Labourites: We all accept that!)* and, in the meantime, accepting that I beg the honourable Members not to pass judgment in advance of receiving the evidence."

On October 7th, the session of the Judicial Inquiry was opened. The Bench was occupied by Mr. Justice Finley Johnson (America), Sir Henry Gollan (Britain), and Mr. K. Suga (Japan), with Mr. R. T. Bryan, Jr. acting as Secretary. The Chinese judge was absent. The Chinese opposition was stronger than ever.\*

The Commission was empowered to determine the procedure to be adopted; to require, so far as the different legal systems applicable might permit, the attendance of witnesses and the production of documents, and to take evidence on oath; and to permit any person or public body concerned to appear before it in person or by legal representatives and call and cross-examine witnesses. It was desired that the findings of the Commission should, if possible, be unanimous.†

The Council agreed to abide by these findings and, further, to suspend Mr. K. J. McEuen, Commissioner of Police, from duty, without prejudice, until the completion of the Inquiry.

The Inquiry included in its scope the investigation of: (a) the origin and character of the disturbances which took place at

\*On the eve of the opening of the session, the Chinese General Chamber of Commerce issued the following statement:

"With reference to the tragedy of May 30th, 1925, the rights and wrongs of the case are now well known inasmuch as the Chinese arrested and brought for trial before the International Mixed Court had all been acquitted and released, and an investigation into the case had been conducted both by the Special Commissioners appointed by the Chinese Government and the Diplomatic Body.

"In view of the action taken by the Chinese Government and its official protest against the proposed judicial inquiry, and in view of the sound reasons and firm pronouncements supporting the protests which have been endorsed by the people, this Chamber now make solemn declaration with regard to the one-sided act of the judicial inquiry, that all Chinese citizens will under no circumstances be identified or associated with said inquiry, and this Chamber further declares that this solemn declaration will be firmly adhered to. Let all foreigners and Chinese take due notice of the above statement."

†Mun. Council's Report, 1925, p. 76.



Shanghai on or about May 30th, 1925; (b) the reasons, if any, that existed for anticipating disorder; (c) the precautions that were or might have been adopted to prevent the same; (d) the measures taken to suppress it; (e) the circumstances in which certain persons lost their lives and other persons suffered injuries.

At the opening of the session, Mr. Justice Finley Johnson, as senior member of the Commission, stated that the proceedings of the Court of Inquiry differed from those of an ordinary court in the fact that there was no prosecution and no defence.

In effect, we must agree that the proceedings of the Commission were unique in their nature. It was, as it might be anticipated, a process of self-ascertainment on the part of the Council of its international status and independence from the Diplomatic Body, and beyond this and the satisfaction of British public opinion the judicial inquiry had hardly any significance. It could not and did not restore the mutual confidence between the Chinese and the foreigners in China, as anticipated by some foreign politicians.

Thirteen sessions were held, from October 7th to 27th, and a number of witnesses passed before the Commission, but nothing new was added to the facts, which were already established by the diplomatic delegates and the Mixed Court, which tried the students arrested in connection with the incident, and which the reader will find in Chapter XV of this monograph.

However, as far as the general political situation in China and the causes of the events of May 30th, were concerned, the findings of the Commission could not be under-appreciated. They had a decided effect on the subsequent policy of the foreign administration in China, which we will have an opportunity of analysing in the next two chapters.

Concluding his report\* and enumerating the reasons of disturbances, Mr. Justice Finley Johnson stated: (1) that the question of extraterritoriality which compels the Chinese people to submit to foreign laws should speedily and without delay be mutually discussed and settled; (2) that the alleged grievance on the part of the Chinese people relating to the loss of sovereignty and territory in the region of the city of Shanghai is also a question which those in authority should not overlook; (3) that the grievance of the Chinese people concerning unjust treaties negotiated with selfish and perhaps dishonest officials, is another question which should be carefully considered, mutually discussed, and justly settled by all of the friendly nations of the Chinese people; (4) that the foreigners in China have failed to take into account the principles of liberty and independence which they themselves have spread abroad throughout China, and (5) that the Chinese people have begun to take on a new civilization.

Of course, some of these theses can be disputed, but the principles advanced shifted to the background many points which were commonly regarded as immediate causes of the incident.

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\*For full reports of International Judicial Commission, see Appendix.

In the light of Mr. Justice Finley Johnson's report they appeared to be of an inferior importance and did not exceed the dimensions of purely local matters.

Yet the tendency to advance these problems to the foreground prevailed, and on October 1st, Mr. M. W. J. Oudendijk, the Netherlands Minister and Dean of the Diplomatic Body at Peking, handed to the Waichiaopu a Note in which he expressed the readiness of the Diplomatic Body to discuss the problems advanced by the Chinese community at Shanghai with respect to the rendition of the Mixed Court and the question of Chinese representation on the Municipal Council.

The raising of purely local matters to the importance of international problems proved, however, to be fatal to their speedy solution. They became automatically associated with such of China's cardinal problems as tariff autonomy and extraterritoriality, which hardly can be solved under present conditions in China without further violent commotions.

Under these circumstances the Diplomatic Body was helpless to effect the necessary settlement and establish a *modus vivendi* capable of satisfying both Foreign and Chinese Communities in Shanghai, and the matter was left to be dealt with by the local administration\*

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\*As an expression of goodwill towards the Chinese the Council determined to make a compassionate grant to those who were wounded on May 30th, and the relatives of the killed, notwithstanding that the findings of the majority of the judges exonerated the Municipal Police from blame.

On December 21st, 1925, the Council informed the Consular Body concerning the resignation of the Commissioner of Police, Mr. McFuen, and the officer in charge of Louza Station, Inspector Everson; renewed its expression of regret at the loss of life on May 30th, and requested the Consular Body to transmit to the Commissioner for Foreign Affairs a cheque for \$75,000, as a mark of sympathy with the wounded and with the relatives of those killed. This grant, however, was refused by the Commissioner for Foreign Affairs, who received definite instructions from the Waichiaopu not to accept it under any consideration. On the other hand, many Chinese public Bodies also protested against the acceptance of the cheque on the ground that it formed "a further insult to the Chinese people."—AUTHOR.

## CHAPTER XII.

### MUNICIPAL COUNCIL, 1905-1920.

#### CHINESE REPRESENTATION ON THE COUNCIL.

##### General.

The demand of the Chinese General Chamber of Commerce and the General Union of Labour, Commerce and Education concerning Chinese representation on the Municipal Council could not be regarded as unexpected. Since 1905 this problem had occupied a very important place in local problems connected with the administration of the Settlement. These problems were not solved by the inauguration of the Chinese Advisory Board or Committee in 1920, and the failure of all legislative attempts of the Municipal Council during the last ten years was primarily due to the non-settlement of this important issue. It appeared that the principle "*that there shall be a Chinese element in the municipal system to whom reference shall be made, and assent obtained to any measure affecting the Chinese residents,*" declared by the Conference of the Diplomatic Corps at Peking in 1864, was absolutely indispensable for the success of the self-government of the Foreign Community.\* In course of time the Chinese became a factor which could not be disregarded if the administration of the Settlement were to function smoothly and effectively. However, these views, framed so definitely by the Diplomatic Conference at Peking in 1864 and the Landrenters' Meeting in 1866† found no realization in course of the subsequent sixty years, for the limited function of the Advisory Committee could not be taken in any way as "a Chinese element in the municipal system." The Advisory Committee was not even the Consultative Committee of 1905, when an attempt was made by the foreign community to come into direct touch with Chinese public opinion. It was a body to whom, from time to time at its discretion, the Council referred some matters and whose function could neither satisfy the Chinese nor the foreign communities. It was absolutely without responsible powers, and, as a body, deprived of the necessary authority to endorse any action on the part of the municipal government of the Settlement. It enjoyed neither moral nor legal power to sanction in the name of the Chinese community any measure proposed by the Municipal Council, and without this sanction it was scarcely possible for the foreign rate-payers to pass it.

Chinese Consultative Committee, 1905.

The first serious attempt on the part of the foreign community to solve the problem after the failure of the projected amendment of the Land Regulations in 1866† was made in 1905. It was just after serious local disturbances in connection with some measures taken by the Council and the Consular Body in respect to the Mixed Court.§ Anti-foreign feeling ran high. The cosmopolitan

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\*See "Shanghai: Its Mixed Court and Council."—1842-1924, p. 14.

†See *Ibid* p. 15.

‡See *Ibid*

§See *Ibid* p. 128, 131.



communities at Shanghai, friendly towards each other in general, divided themselves into two inimical factions—Chinese and foreigners, although the subject of their dissension was one which aimed at the benefit of both equally.

On December 20th, 1905, three representatives of the senior native guilds held an interview with the Chairman of the Municipal Council in connection with the steps then being taken for the restoration of order in the Settlement. A proposal was formulated at this meeting that a committee be organized, consisting of merchants and gentry but not of officials, which by regular meetings with a committee of the Council, might keep the latter informed of Chinese public opinion in all important matters.

In February 1906, this proposal assumed formal shape, and was, between the date of the publication of the Council's minute in regard thereto and the Annual Meeting of Ratepayers, the subject of considerable public comment and newspaper correspondence. On February 8th, 1906, the Council received a letter from Mr. Yu Ya-ching, Vice-Chairman of the Executive Committee,\* informing it that all the members of the committees of the various guilds at Shanghai unanimously agreed to elect seven persons to form the Executive Committee of the Consulting Committee of Chinese Merchants to represent the interests of their respective guilds.†

The idea of the committee intended to express the opinions of the Chinese community and that of the influential guilds met with a favourable reception on the part of the Municipal Council, which did not fail to realize the value of direct contact with the powerful Chinese merchants. A sub-committee of the Council was immediately appointed to meet the Chinese representatives and discuss the outstanding problems but before proceeding with these discussions the Chinese Executive Committee expressed its desire to have the constitution of the newly-formed body either legalized or sanctioned in some manner by the foreign community. It requested the Council to refer the constitution of the Committee to the approaching Annual Meeting of Ratepayers with a view to confirming—

(1) That the Committee is representative of the Chinese banking, mercantile and business interests of the foreign Settlement, and that its members will be independently selected from amongst those actually concerned in promoting those interests. Chinese officials will have no voice whatsoever in the election of its members or in their proceedings.

(2) That the province of this Committee consists solely in making suggestions on representation of the Chinese merchants in order to promote the welfare of the Settlement. Furthermore, the guilds hope that should the Council intend to make any alteration of the existing regulations or to make new Bye-laws affecting Chinese interests, the Committee would be afforded an opportunity of consulting with the Council before the same be carried into effect. There is no desire on our part to lay claim to any share in the administration of the foreign

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\*Mr. Yu Ya-ching, present Chairman of the Shanghai General Chamber of Commerce.—AUTHOR, 1926.

†Mr. Yu Ya-ching to Mun. Council, February 9th, 1906. The names of members of the Committee elected for the year 1906 were as follows:

Mr. Woo Shao-ching, Chairman, Member of Committee of Silk Guild; Mr. Yu Ya-ching, Vice Chairman, Member of Piece Goods Guild; Mr. Shih Zung-whai, Treasurer, Member of Committee of Native Bankers' Guild, Mr. Chow Tsing-seng, Director of Chinese Telegraph Station, Mr. Chu Pao-san, General Importer and Vice Chairman of Chinese Chamber of Commerce, Mr. Chen Fai-ting, S.M.S.N. Co., Mr. Yu Ya-ching, Netherlands Bank.

Settlement, nor to take any steps which might interfere with the existing responsibility and authority of the Ratepayers' representatives.

(3) That the objects with which the Committee is established are:—

- (a) From time to time to make suggestions to the Municipal Council for the mutual benefit of the Chinese and foreign communities.
- (b) To keep the Council advised as to the opinions and feelings of the Chinese community in regard to questions affecting their special interests.
- (c) To be a recognised channel through which the reasonable complaints of Chinese residents may be submitted to the Council and more especially, in cases where difficulty may be experienced by those concerned in bringing such complaint directly to the notice of the Council.
- (d) To promote the general welfare of the Settlement by increasing confidence and goodwill between Chinese and foreigners, and generally to exercise the influence of local guilds in maintaining harmonious relations between all sections of the community by preventing misunderstandings for ever.\*

This scheme contained the germ of a possible reorganization of the Representative Committee into a formal body, which could in course of time easily become an integral part of the municipal administration of the Settlement. The outgoing Council of 1905, however, did not consider this as an obstacle to the settlement of the issue in view of more important considerations, but the measure met with little public support. It was abandoned as a result of a resolution of the Annual Meeting of Ratepayers declining to confirm the action of the former Council in that respect. In the opinion of the ratepayers the Council "*had not the power under the Land Regulations to recognise the constitution of the Committee of Chinese called the 'Representative Committee'*".†

Project of Chinese Settlement in the North Sinza District, 1903-1906.

However, in course of the following ten years the Municipal Council was brought face to face with a number of problems, the solution of which was a matter of vital importance to the Settlement. These problems were, the extension of the municipal roads, collection of rates, policing of new roads running into Chinese territory, and Settlement extension.§ It appeared beyond any doubt that the Chinese residents in the Settlement as well as those residing outside the Settlement's limits were not less interested in the successful settlement of these issues than the foreigners, for it meant for them not only improvement of living conditions and personal safety, but also an increase in the value of their property. However, the native residents abstained from taking any part in the successful solution of these problems, though through their powerful guilds they could easily have assisted the Council to overcome the resistance of the Chinese authorities.

Moreover, perusing the voluminous correspondence between the Council and the Consular Body, and between the latter and the

\*See "Shanghai: Its Mixed Court and Council."—1842-1924, p. 36.

Mr. Woo Shao-ching, Chairman of the Committee, to the Mun. Council, February 28th, 1906.

†Messrs. F. Anderson, E. S. Little, C. L. H. Iburg, H. De Gray, H. Keswick, W. A. C. Platt, E. F. Mackay, John Liddell and O. Meuser.

‡Mr. C. Holliday, Chairman, Mun. Council, to Mr. Yu Ya-ching, April 12th, 1906.

§Mun. Council's Annual Report, 1906, pp. 397, 410; 1907 p. 105; 1908 pp. 226-234; 1909, pp. 264-271; 1910, pp. 260-265; 1911, p. 149.

Taotai and Viceroy of Nanking, relating to the period between 1906 and 1911, we may trace definite signs that the Chinese community was even opposed to all steps of the Council in respect to the improvement of local conditions.\*

Of course, the failure of the Council to bring about any improvement within and outside the Settlement could not be attributed entirely to opposition on the part of the Chinese community, whose influence in local matters was limited by the authority of the autocratic imperial officials—the Viceroy of Nanking or the Taotai of Shanghai. But the subsequent change of *régime* did not alter the situation. The new republican authorities whose power in the earlier period of 1912 was entirely based on social support were also vigorously opposed to all endeavours of the Council.†

The reason of this somewhat extraordinary attitude of the Chinese community after the Council had rendered such effective protection to the Chinese in 1913‡ became fully explained in 1914, when the Consul-General for France succeeded in bringing about an understanding with the Special Envoy for Foreign Affairs regarding the extension of the French Settlement, ratified and published on April 8th, 1914.§

The conclusion of this Convention, of course, was a very considerable step towards the general solution of all outstanding local problems, for the French authorities had experienced in their efforts the same difficulties as the Council. This success should be attributed entirely to the support of the Chinese community, which rendered assistance to the French authorities upon the understanding that certain concessions would be made in their favour. In fact, paragraph 4 of the Convention|| introduced quite a new principle into the administration of the French Concession. It stated as follows:—

French Convention of April 8th, 1914.

“Two Chinese notables shall be designated by common accord by the Commissioner of Foreign Affairs (Kuan Cha-shih) and the Consul-General for France for arranging questions touching Chinese residents in the French Settlement with the French Municipal Council.”

Of course, it was not Chinese representation on the Municipal Council of the French Concession in the strict sense of the word, but it was still the application of a principle hitherto unknown in the practice of foreign administration in Shanghai, the importance of which becomes obvious when we turn again to the problems which faced the International Settlement.

In March, 1915, the Senior Consul forwarded to the Council a draft of an agreement,\*\* in which the Special Envoy for Foreign

\*Taotai Hsu Nai-ping to the Viceroy and the Waiwupu, from the “Shen-pao,” May 5th, 1906, and “Universal Gazette,” August 14th, 1906.—Mun. Council’s Report, 1906, pp. 397, 399.

†Memorandum from the Waihiaopu to the Dean of the Diplomatic Body at Peking, April 7th, 1912.

Mun. Council’s Annual Report, 1911, p. 149; 1912, p. 33B.

Mun. Council’s Annual Report, 1914, p. 101B.

‡Chinese Guilds to the Mun. Council, July 17th, 1913; Guild of Silk Filatures, and 15 Silk Filatures to the Mun. Council, August 22nd, 1913.

§Mr. G. Kahn, Consul-General for France, to Mr. E. C. Pearce, Chairman, Mun. Council, July 14th, 1914.

||Bulletin Municipal, July 31st, 1914.

\*\*“Municipal Gazette,” March 4th, 1915.



Affairs expressed the consent of the Chinese authorities to the extension of the Settlement and adjustment of some other outstanding questions. This draft agreement contained, *inter alia*, the following paragraphs :—

(3) The Chinese Government are of the opinion that in theory the Municipal Council should include several Chinese members to deal jointly with matters affecting Chinese in the whole Settlement, but recognising that the existing Land Regulations preclude such inclusion, they accept in the meantime the Advisory Board provided in Article IV as a satisfactory substitute until Chinese representation on the Council may become feasible.

And further :

(4) The Chinese Advisory Board referred to in the preceding Article to consist of two nominees of the Ningpo Guild, two nominees of the Canton Guild and one nominee of the Special Envoy for Foreign Affairs or of the highest local Chinese authority in Shanghai. The nomination of the members of the Board to be subject to the veto of the Consular Body. The duties of this Board to be confined to advising at the request of the Municipal Council on all matters affecting the interests of the Chinese residents in the whole Settlement and to making representations to the Council with regard thereto. The members of the Chinese Advisory Board when giving advice and making representations to the Municipal Council must do so in unison and they will not be allowed to act independently.

The Ratepayers' Meeting held on March 23rd, 1915, un-animously accepted these conditions as the only possible way to settle the matter, but the subsequent negotiations between the Foreign Ministers and the Chinese Government resulted finally in a deadlock which remains unbroken.

Chinese Protest  
and Plea of Re-  
adjustment sub-  
mitted to the  
Peace Conference  
at Versailles,  
1919.

The participation of China in the Great War on the side of the Allies and the abolition of extraterritorial right of Germans and Austro-Hungarians resulted in China's plea for readjustment, which her representatives submitted in the form of a memorandum to the Peace Conference at Versailles in 1919 :

"Since the beginning of the present century, and especially since the Revolution of 1911, which resulted in establishing a Republican régime in place of the old Imperial autocracy," stated the Chinese delegation in the introduction of the memorandum presented to the Conference, "China has made remarkable progress in the political as well as in the administrative and economic fields.

"Her free development has been greatly retarded, however, by a number of hindrances of an international nature. Of these hindrances, some are the legacies of the past due to circumstances which do not exist now, while others arise from recent abuses which are not justifiable in equity or in law. Their maintenance would perpetuate the causes of difficulties, friction and discord. As the Peace Conference seeks to base the structure of a new world upon the principles of justice, equality and respect for the sovereignty of nations, as embodied in President Wilson's Fourteen Points and accepted by all the Allied and Associated Powers, its work would remain incomplete if it should allow the germs of future conflicts to subsist in the Far East.

"The Chinese delegation have, therefore, the honour to submit the present memorandum dealing with questions, which require readjustment so that all hindrances to China's free development be removed in conformity with the principles of territorial integrity, political independence and economic autonomy, which appertain to every sovereign State."

One of the main points which aroused the grievance of the Chinese Government, was the existence of foreign settlements and

concessions enjoying the privilege of municipal self-government, in which the Chinese residents of those settlements and concessions did not participate :

" Although Chinese citizens constitute the bulk of the population in most of the Concessions and contribute by far the largest share of the revenue of these municipalities," stated the memorandum, " they are not represented in the Municipal Councils, with the exception of the Kulangsu International Settlement, the Municipal Council of which has a Chinese member appointed by the Chinese local authority. In the Shanghai International Settlement, Chinese, who compose over 95 per cent. of its population, are allowed to have only an Advisory Committee of three delegates elected annually by the various Chinese commercial bodies."\*

The Chinese Government expressed a most earnest desire that all the foreign settlements and concessions be returned to China, and that pending the final restoration certain modifications be introduced in the existing regulations of the foreign concessions so as to enable the Chinese residing therein to take an active part in their municipal administrations.

Almost simultaneously with these representations the local Chinese authorities in Shanghai and the gentry forwarded through the Special Envoy for Foreign Affairs to the Consular Body at Shanghai a draft of a new set of Land Regulations calling for the grant of the franchise to the Chinese in the Settlement. A rental of M.\$10 per mensem was to confer a vote. The same draft provided for the abolition of the Court of Consuls and the establishment in its place of a court to be composed of members of the Consular Body and of Chinese officials. Provision was also made for an additional Chinese Government land tax on property within the Settlement and for the abolition of the jurisdiction of the Mixed Court, except in regard to breaches of the proposed new Regulations, instead of which the Shanghai Sub-District Court was to function in the Settlement.

Chinese project  
of a new set of  
Land Regulations  
1919.

This project was the outcome of the general agitation started in July and August 1919 against the payment of the increased General Municipal Rate levied in connection with the increase of municipal expenditures due to the Great War.† This agitation was carried on under the slogan "*No taxation without representation*," the immediate introduction of which was, of course, outside the power of the Council, this being a matter entirely for the Government of China and the Treaty Powers concerned. Nevertheless, the Municipal Council expressed its consent that " when in future the Finance Committee of the Council has under consideration proposals to increase the rate, it will welcome the advice of and consult with a representative Chinese Committee."‡

However, the Chinese General Chamber of Commerce acting under the pressure of the various Street Unions and Guilds insisted on the immediate solution of the problem of Chinese representation on the Municipal Council prior to the payment of the increased taxes. Referring to the above-cited views of the Council, Mr.

\*For full text see " Shanghai: Its Mixed Court and Council"—1842-1924, p. 38-40.

†Mun. Council's Annual Report, 1919, p. 258A.

‡Mun. Council to Mr. Chu Lai-fong, August 13th, 1919.

Chu Pao-san, Chairman of the Chamber, stated in his letter to the Municipal Council, dated August 15th, 1919, as follows :—

"The letter was communicated at once to various representatives of Chinese merchants, who, visiting the Chamber, declared that they are not satisfied with the reply, since the fact is that they are not refusing to pay the General Municipal Rate, but they request that the Council should observe the privileges enjoyed by the merchants of various foreign countries at Shanghai after fulfilling their duty, but not enjoyed by Chinese. This is the reason that the Chinese cannot but propose to request the Council to *entitle them to the privilege of electing Councillors.*"

The Chamber proposed to appoint four members to meet the Council and to arrange matters to "the satisfaction of both sides," but the Council declined the proposal stating that in its opinion "the policy of the Chamber in this matter must inevitably tend to alienate foreign sympathy with the aspirations of the Chinese community to a voice in the affairs of the Settlement, and it leaves the Council with no alternative but to take immediate action to enforce payment of the rates in all cases where refusal of payment is made upon demand".\*

The agitation against the payment of the new assessment continued during the greater part of August 1919, but after the 25th of that month it began gradually to subside, and the collection of the increased taxes proceeded satisfactorily. Finally the leaders of the Street Unions and the Chinese Chamber of Commerce held a conference, as a result of which a circular was issued in the name of both organizations advising the people to pay, thus closing the incident.

In the earlier part of 1920, the problem of Chinese representation on the Council again became the subject of agitation in the local and Chinese press. Public opinion was divided into two distinct groups. One was in favour of the immediate inclusion of Chinese on the Council and the other, by far larger, against any concession whatsoever in respect to admittance of Chinese to membership of the Municipal Council.

The official standpoint of the Council had been intimated to the Consular Body in a letter, dated October 24th, 1919, which states in part :

"Since so much attention has been focused during the past few months on the demand made at the time of the rate agitation of July and August last, that Chinese should be admitted to membership of the Council, and since it is understood that official representations have recently been made to the Diplomatic Body and referred to the Consular Body for an expression of its views, I have the honour to advise you that the question of admitting Chinese to participation in the administration of the affairs of this Settlement either through the medium of a Chinese Advisory Board or Committee or by amendment of the Land Regulations to permit of their election to the Council, was considered at a recent meeting of members and ex-members of Council. After full discussions a vote was unanimously recorded against Chinese representation on the Council on any consideration, but in favour of the creation of a Chinese Advisory Board or Committee, provided that its meetings be held in the Council's Offices, that it shall have a membership of five to be nominated annually by the Chinese, that the nomination be subject to the veto of the Consular Body, that the nominees shall have resided in the Settlement for the five years immediately preceding nomination, that they

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\*Mr. Ed. White, Acting Chairman, Mun. Council, to the Chairman and Vice-Chairman of Chinese General Chamber of Commerce, August 19th, 1919.



shall have paid General Municipal Rate during the whole of this period on an assessed rental of not less than Tls. 1,200 per annum, that they shall not, at the time of nomination nor whilst on the membership of the committee, hold any official appointment under the Chinese Government, and finally that the functions of the committee be limited to those set forth in Clause 4 of the Settlement Extension Draft Agreement of 1915.\*

On the other hand, the Chinese General Chamber of Commerce and the Street Unions seemed to have assumed a more reconciliatory attitude. They addressed a letter to the Chairman of the Council, which stated that "with a view to the peaceful and satisfactory settlement of outstanding questions, and for the purpose of securing justice and fair-play for the Chinese ratepayers, the two organizations recommend as a temporary measure the recognition of a Chinese Committee of six elected by these organizations." The functions of this Committee were to advise the Council on all Municipal affairs, particularly those wherein Chinese interests were concerned. For the sake of effective and efficient co-operation on the part of the Chinese ratepayers, the counsel of the Chinese advisors should have been respected. While agreeing, however, to the temporary solution of the problem on such conditions, both organizations expressed themselves against the Council's proposal to subject the election of the members of the Provisional Advisory Committee to the veto of the Consular Body and to limit their functions to those set forth in Clause 4 of the Settlement Extension Draft agreement of 1915.†

In spite of these official concessions on the part of the Chinese community, a section of foreign ratepayers headed by Messrs. E. S. Little and E. I. Ezra proposed at the Annual Meeting of Ratepayers on April 7th, 1920, the following resolution :

Project of Chinese representation on the Municipal Council, 1920.

"That this meeting hereby instructs the Council to take such steps as are necessary to procure the alteration of the Land Regulations for the purpose of increasing the number of Councillors from 9 to 12 of which three shall be Chinese ratepayers with the same qualifications as foreign Councillors, and to be elected as may be subsequently determined."

The grounds for proposing this resolution were, according to the addresses delivered by Messrs. Little and Ezra at the meeting as follows :

(1) That the foreigners and Chinese at Shanghai are linked together in all kinds of enterprises and are now essential one to the other and that accepting the principle that "without representation there should be no taxation" for themselves the foreigners deny its benefit for the Chinese.

(2) The Chinese pay a large proportion of the taxes of Shanghai. The roads, parks, police protection and all the comforts of civilization are due in part to their annual contributions to the Municipal revenue.

(3) It is to the advantage of the foreigners not only to work in harmony with the bulk of the native population, but to provide a local Government, which, while safeguarding the position of foreign interests in Shanghai, is also representative of the entire community.

In support of this contention Mr. E. S. Little produced a petition from the Chinese ratepayers. It was signed or chopped by more

\*Messrs. Chu Pao-san, Chairman, the Chinese General Chamber of Commerce, and Chen Tsen-min, Chairman, the League of Street Unions, to the Mun. Council, January 7th, 1920.

†Messrs. Chu Pao-san and Chen Tsen-min to Mun. Council, January 10th, 1920.

than 8,000 firms and ratepayers in the Settlement and set forth as follows :

" We, the undersigned, 8,000 signatories, representing over 600,000 Chinese residents and ratepayers within the Settlement, respectfully petition the Annual Meeting of Ratepayers to grant the Chinese representation on the Council. We do not desire to argue the point but would emphasise that the Chinese subscribe a considerable proportion of your revenue annually and yet are without any voice in taxation or any other Municipal matters. You, gentlemen, from the West taught us that it is repugnant to your ideas that there should be taxation without representation. We, therefore, feel that in approaching you with our request we shall meet with a sympathetic hearing. We earnestly pray your honourable meeting to grant this, our petition."

It was not in the power of the meeting, of course, to grant any such petition except to pass the resolution by Messrs. E. S. Little and E. I. Ezra authorizing the Council " to take such steps as necessary " in order to enable the Chinese ratepayers to take an active part in the municipal government of the Settlement, but still the meeting expressed itself opposed to the idea of Chinese representation on the Council.\*

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\*See " Shanghai: Its Mixed Court and Council"—1842-1924, p. 40.

## CHAPTER XIII.

### MUNICIPAL COUNCIL, 1920-1926.

#### CHINESE REPRESENTATION ON THE COUNCIL.

Whilst strongly opposed to the representation of Chinese on the Council, the Council as well as the foreign ratepayers were in favour of the creation of a Chinese body with consultative functions. The Council proposed at the same meeting on April 7th, 1920, a resolution to the effect.

China Advisory Committee, 1920.

"That this meeting approves of the creation of a Chinese Advisory Committee and that the constitution and powers of such committee be those set forth in the letter from the Chairman of Council to the Senior Consul dated October 24th, 1919, and published in the Municipal Gazette of January 8th, 1920."

In proposing this resolution Sir E. C. Pearce, Chairman of the Council, drew the attention of the audience to the fact that the Chinese paid in general rates Tls. 1,224,000 and the foreigners Tls. 811,000. If one takes the Chinese population at 700,000 (it was 620,400 in 1915), and the foreign population at 30,000 (it was 18,519 in 1915), one finds that the Chinese paid Tls. 1.75 per head as against the foreigners Tls. 27.00, which opens to debate the contention that the Chinese have any exceptional rights in managing the affairs of the Settlement in view of the amount of municipal taxes paid by them.\*

Following these historical and legal premises the Council proceeded along the line of least resistance and secured an absolute majority of votes in favour of the establishment of an Advisory Committee. In fact, amongst many problems which had faced the Chinese and foreigners in Shanghai the problem of the Chinese representation on the Municipal Council had been one which presented great difficulties and complications in its solution.

Chinese on the Council from a legal point of view, 1920.

The privilege of Municipal self-government of the foreign community at Shanghai is a logical result of a highly developed principle of extraterritoriality, which has enabled the foreign community, without encroachment on China's sovereign rights, to enact measures, which under different circumstances would have been a direct violation of the Chinese constitution. Of course, such an

\*The following table shows the comparative amount of General Municipal Rate paid by the Foreign and Chinese Communities for the period 1905-1925.

#### FOREIGNERS :—

				Number of Foreign Population.	Amount paid.	Amount paid per head.
1905	..	..	..	11,497	Tls. 285,892	Tls. 24.87
1910	..	..	..	13,536	" 499,200	" 38.11
1915	..	..	..	18,519	" 569,052	" 31.27
1920	..	..	..	23,307	" 870,277	" 37.33
1925	..	..	..	29,947	" 1,763,384	" 58.90

#### CHINESE :—

1905	..	..	..	452,716	Tls. 476,671	Tls. 1.05
1910	..	..	..	488,005	" 672,108	" 1.37
1915	..	..	..	620,401	" 847,636	" 1.36
1920	..	..	..	759,839	" 1,268,914	" 1.66
1925	..	..	..	810,279	" 2,021,702	" 2.49

The number of the population is given according to the quinquennial municipal census.—AUTHOR.



exceptional status could be established only by the Sovereign Power of China exercising an unlimited control over the State.

As a matter of fact, the self-government of the foreign community north of the Yang-King-Pang is primarily based on the respective provisions of the Treaties concluded in the period of 1842-1844 between the Sovereigns of China and the Western Powers, whereby both high contracting parties delegated their power in respect to the further determination of "*matters concerning ground and houses set apart for the foreigners to the local officers and Consuls.*"\*

This power was strictly limited in its nature and extent, and was specified in detail in the first set of Land Regulations promulgated by the Imperially-appointed Intendant Kung-Moo-kew, on November 29th, 1845, and approved by the Viceroy of Nanking:

"In the year 1842, the Imperial commands were received in reply to a Memorial permitting commercial intercourse being carried on at the five ports of Kwangchow, Fuhchow, Neaman, Ningpo and Shanghai, allowing merchants and others of all nations to bring their families to reside there, and providing that the renting of ground for the building of houses must be deliberated upon and determined by the local authorities in communication with the Consul, both acting in conformity with the feelings of the inhabitants and the circumstances of the locality of Shanghai; that the ground north of the Yang-King-Pang and South of the Le-Kea-chang should be rented to English merchants, for erecting their buildings and residing therein, and some regulations which have been agreed upon in reference thereto and to which obedience is necessary are hereinafter specified."

The proximity of the document to the original Treaties excludes any possibility of an error on the part of the Intendant as far as the specification of the extent of the power conferred upon him as a "local officer" is concerned. It was strictly limited to municipal affairs, in the present sense of this expression, and did not cover such issues as the determination of the legal status of the Chinese and foreigners.

Meanwhile, Chinese representation on the Municipal Council as suggested by the Chinese, was and is a definite change of the legal status of the Chinese community in the Settlement *vis-à-vis* the general administration of the country. This change, from a legal point of view, could hardly form a subject of any diplomatic arrangement of the Chinese Cabinet and Ministers of the Powers concerned, whose authority did not and does not extend to issues embodying the right to accord extraterritorial privileges to any section of people of Chinese descent. Chinese representation on the Municipal Council as understood by the Chinese meant and still means nothing less than an active participation of the Chinese community in the privilege of self-government of the foreign community at Shanghai. It means the right of a certain section of Chinese to be elected as officers of a body which is exempted from general jurisdiction of China and subject to the specific jurisdiction of an international body—the Court of Foreign Consuls.

The position becomes still more delicate if one takes into consideration the possibility of having the number of Chinese admitted

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\*Supplementary Treaty of October 8th, 1843; Treaty of Wanghai, July 9th, 1844, and French Treaty of September 24th, 1844.

as Councillors in proportion to the amount of taxes paid by the Chinese Community, i.e. that the Chinese may have an equal number of seats on the Council with the foreigners or even a majority.

The position from a legal point of view would only be different if the Chinese community did not participate directly in the municipal election or delegate their representatives as a body ; if the foreign community were to co-opt certain members of the Chinese Community as individuals conferring upon them the rights of Councillors even with the power of voting and the right of being elected to the Council's executive offices. This method, of course, would not extend any portion of the privileges enjoyed by the foreign community to any section of the Chinese community residing in Shanghai and thus require to have the reform sanctioned by the supreme Government of China. An additional arrangement of the Peking Cabinet and the Diplomatic Body to that effect could solve the problem, but any act giving the local Chinese community as a body the right to participate in any form or shape in the municipal self-government of the foreign community at Shanghai must rest and rests solely with China's Supreme Government as changing organically the constitution of the Settlement and affecting the legal status of the Chinese community. This Supreme Government according to the Constitutional Charter of the Republic of China is the National Parliament at Peking.

No other combination of Chinese Government could claim that the term "the Supreme Chinese Government at Peking" of Art. XXVIII of the Land Regulations of 1898, now in force,\* could be attributed to it, nor had any Chinese authority from the Taotai up to the Viceroy of Nanking and the Tsungli Yamen and Ministers of His Imperial Majesty the Emperor of China ever claimed or exercised more power in respect to the self-government of the foreign community at Shanghai than was conferred upon them by the Treaties. Thus it is very doubtful whether sanction of the Peking Cabinet could render valid the reform proposed by Messrs. E. S. Little and E. I. Ezra in 1920. For it had to pass through the Parliament and form a special act whereby the Chinese community at Shanghai as a body had to obtain first the same privilege as the foreign community from the Supreme Power of China. An international act between China and the Treaty Powers could only render this act effective with regard to its enforcement in the Settlement. A long and very doubtful proceeding, for it was and is still very improbable that any Chinese Parliament would agree to extend any portion of extraterritorial rights to any particular Chinese body as contrary to the principle of China's integrity.

Thus the establishment of an Advisory Committee proposed by the Council in 1920 was practically the only possible solution of the issue which corresponded strictly to the existing Treaties and the statutory law of the Republic of China.

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\*Art. XXVIII., Land Regulations, 1898 reads as follows : " Hereafter should any corrections be requisite in these Regulations, or should it be necessary to determine on further rules, or should doubts arise as to the construction of, or powers conferred thereby, the same must be consulted upon and settled by the Foreign Consuls and local Chinese authorities, subject to confirmation by the foreign representatives and *Supreme Chinese Government at Peking.*"

On April 7th, 1920, the Council directed an official communication to the Chinese General Chamber of Commerce informing the latter of the resolution of the ratepayers and asking its good offices to put it into effect. The membership of the newly created Chinese Advisory Committee, in the opinion of the Council, should have been as representative as possible of the whole of the Chinese community, and the Chamber was requested to take the initiative in calling together the guilds and associations with a view to the selection of at least five Chinese who were qualified for nomination according to the terms of the Chairman's letter to the Senior Consul, dated October 24th, 1919. However, the Chamber declined to take the initiative\* on the ground that "as the Chamber was the union of the different trades it could only act in the interests of the commercial community and therefore could not communicate with or give any notice to other associations outside its province."

Meanwhile the Chinese community at large displayed considerable interest in the proposed creation of a Chinese Advisory Committee. The matter obtained popularity and two influential Chinese organizations, the Canton Guild and the Ningpo Residents Association, expressed the view that as the matter affected the rights of the whole Chinese community at Shanghai, the members of the Committee should be elected by the whole body of the Chinese ratepayers. These views were immediately upheld by the Chinese General Chamber of Commerce. On June 22nd, 1920, a meeting of various Chinese unions was held, when a Committee of Preparation was appointed for making preliminary arrangements. Simultaneously to that, the same unions had taken steps to form a special body called the Chinese Ratepayers' Association, which was finally established on October 14th, 1920. An election took place resulting in the election of a directorate, which had to control the affairs of the association. Following this on November 9th, 1920, Messrs. Sung Hang-chang, Hsia (Ziar) Yung-sung, Moh Er-cho, Yui Shih-chang, and Chen Kuan-foo, were elected to the membership of the Chinese Advisory Committee to the Council.†

However, the Council, upon being advised of the nomination of the members of the Committee by the newly established Ratepayers' Association, expressed itself opposed to accept such nomination for transmission to the Consular Body for approval.

In fact, it was obvious that the Chinese community through the inauguration of a new body—the Ratepayers' Association—and the vesting it with exclusive power to elect members of the Advisory Committee, tried‡ to establish a regular representation of the Chinese community as a body and§ to create a representative organ capable of counter-balancing the authority of the Council.

\*Mun. Council to the Chairman, Chinese General Chamber of Commerce, April 17th, 1920; Chinese General Chamber of Commerce to the Mun. Council, May 30th, 1920.

†Chinese General Chamber of Commerce to the Mun. Council, June 13th, 1920, November 24th, 1920.

‡Text of the Regulations.—Mun. Council's report, 1920, p.196A.

§Mun. Council to the Chairman, Chinese General Chamber of Commerce, January 13th, 1921.



The constitution and regulations\* of the newly formed Chinese Ratepayers' Association provided that the five members to be elected for nomination to the Advisory Committee were to be elected from amongst the members of the Directorate, and that all matters vitally affecting the interests of the Chinese residents in the Settlement as also any proposals or applications requiring to be made in connexion with the local administration should first be dealt with by the Directorate (Art. 6). In effect, therefore, all persons nominated for membership of the Advisory Committee by the Association were placed under an obligation to refer to the Directorate every matter of importance that might have been referred to them by the Council had their nomination been accepted, whilst any representations made by them to the Council would have to be approved in the first instance by the Directorate, which was apparently against the original intention of the foreign ratepayers.†

After a lengthy discussion of the question in the Chinese press, a meeting of the Chinese Ratepayers' Association was called on April 4th, 1921, at which a resolution was passed deleting Art. 6 of the Rules of the Chinese Ratepayers' Association, subsequent to which the nomination of the members of the Chinese Advisory Committee was approved by the Consular Body.

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\*Mun. Council to the Chairman, Chinese General Chamber of Commerce, January 13th, 1921.

†*Regulations of the Chinese Ratepayers' Association.*

1. Designation.—The Association is formed by the Chinese ratepayers of the International Settlement of Shanghai, hence the designation "Chinese Ratepayers' Association of the International Settlement of Shanghai."

2. Object.—The Association aims at the development of self-government in the interests of the general public.

3. Membership.—Chinese ratepayers in the Settlement possessing any one of the following qualifications, are eligible for membership in the Association:—

(a) Holding real estate to the value of Tls. 500 and upwards.

(b) Paying an annual land tax of Tls. 10 and upwards.

(c) Paying G. M. R. on an annual house assessment of Tls. 500 and upwards.

4. Constitution of Term of Office.—The membership of the Association will consist of 27 directors to be elected at the General Meeting, and the members so elected shall hold office for three years, one-third of whom are to be eligible for re-election each year. Those elected for the first term will be divided into three classes (a), (b) and (c) to be decided by lot-drawing; (a) class to hold office for one year, class (b) to hold office for two years and class (c) to hold office for three years, with a Chairman and Vice-Chairman, to be chosen by the directors from among their members. Also the election of five representatives to be nominated by the directorate and the five representatives so chosen shall hold office for one year, but may continue for a second term, if elected. In case of a vacancy arising in the directorate it may be filled by the one polling the next highest vote at the previous election. Other officers (staff) to be appointed by the directorate.

5. Qualifications of a Director.—Any member of the Association who has been a resident of the Settlement for five years and upwards and who possess any one of the following qualifications, will be eligible for membership on the Directorate, such election to be held at the General Meeting of the Directorate:—

(a) Paying an annual land tax and house rate of Tls. 50 or more.

(b) Paying annual G. M. R. on house assessment of Tls. 1,200 or more.

6. Responsibilities and duties of a Director.—All matters vitally affecting the interests of Chinese residents in the Settlement, also any proposals or applications required to be made in connection with the local administration, shall first be dealt with by the Directorate.

7. Meetings.—A General Meeting shall be convened in November of each year to be called the "Chinese Ratepayers Annual Meeting," such meeting to be convened by the Directorate, or on the application of one-tenth or more of the membership of the Association. Special meetings may be convened, and the dates for convening such special meetings shall be fixed by the Directorate.

8. Funds.—The expenses of the Association shall be borne by the Chinese ratepayers within the Settlement.

9. Addendum.—The Regulations of the Association shall come into force on the day of the inauguration of the Association. The rules of the Association may be amended at a regular meeting of the Association by a two-thirds vote of those present and voting at such General Meeting, but notice of an amendment or change of the rules (of the Association) must be submitted in writing (to the Directorate) one month before the convening of such special meeting (of the Association).

"The Council has always appreciated the value of enlightened opinion," said Mr. A. Brooke Smith, Chairman of the Council, welcoming the members of the Advisory Committee at the first meeting on May 11th, 1921, "and we realize that in matters affecting our Chinese fellow residents there are many questions upon which we would welcome the close co-operation and assistance which can be obtained by consultation from time to time with such *enlightened Chinese gentlemen* as yourselves. I am confident that upon all occasions your advice will be sound and wise, and that, with its aid, we will be able to ensure that the Chinese residents of the Settlements will remain happy and contented."

As the spokesman for his colleagues, Mr. Sung Hang-chang, the senior member of the Committee, stated in conclusion of his speech as follows :

"We wish to pledge the Council our very best co-operation in that direction. Not only that, it is our great hope that our services to the Council may prove highly beneficial to the promotion and maintenance of the friendship and goodwill among all residents within this municipality and *this may in time lead to a fuller share on the part of the Chinese in the rights and obligations in the Municipal Administration.*"

As a matter of fact the last words of this passage were characteristic of the situation. The Chinese regarded the establishment of the Advisory Committee as a purely temporary and short-lived measure. It lost in their eyes the authority of a representative institution connected indissolubly with the body of the ratepayers as soon as they were compelled to delete Art. 6 of the Rules of the Chinese Ratepayers' Association, which established the individual and collective responsibility of the members of the Committee before the Association. They were six Chinese individual gentlemen of certain repute, but not a body through which the Chinese Community expected to voice its opinion in matters affecting Chinese interests. In fact already in 1922 the Chinese Community preferred to forward its protest against the revision of Bye-laws through the usual official channel—the Commissioner for Foreign Affairs, but not through the Advisory Committee.\* The Commissioner for Foreign Affairs and the Chinese General Chamber of Commerce were also responsible for the settlement of the Rice Controversy in June and July 1921† though this matter was expressly and formally referred by the Council‡ to the Advisory Committee.

"It is now over 18 months since the Chinese Advisory Committee came into existence," stated Mr. H. G. Simms, Chairman of Council, at a reception given in honour of the Committee on October 3rd, 1922. "As you are aware its mission is a twofold one. In the first place it is expected to assist the Council in matters affecting the welfare of the Chinese Community. In the second place, and by far the most important part of its mission, it is expected to give the Chinese an opportunity of studying Municipal affairs from a Western point of view, so that in due course Chinese representatives would be able to take their place as our colleagues on the Council. *It is a matter for regret that up till now little or no progress has been made in the furtherance of either of these two objects, and the time has come when it is necessary to examine carefully the reasons for this failure, and make a fresh start, fully determined that our objects shall be fulfilled.* Speaking quite frankly, an atmosphere of suspicion on both sides is largely responsible for the poor results. The Chinese

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\*Commissioner for Foreign Affairs to the Senior Consul, March 16th, 1922; March 29th, 1922, March 30th, 1922.

†Commissioner for Foreign Affairs to the Senior Consul, July 9th, 1921.

‡Mun. Council's Annual Report, 1922, p.229A.

are still inclined to look upon the foreigners as people who came and settled here by force; in other words they look upon them as invaders."

And further :

" Foreigners in Shanghai must prepare to admit that we are about to enter a transition stage, when the old system of not allowing Chinese to have any voice in the administration of the Settlement will gradually give way to a new system when Chinese will share our responsibilities. It will be a difficult stage to go through, as there will be a natural desire on the part of the Chinese to go too fast."

These views of the Council were fully confirmed in the address of Mr. Y. S. Ziar, Chairman of the Advisory Committee, who, speaking on behalf of the Committee at a reception on November 14th, 1922, stated *inter alia* as follows :

" In the early history of this treaty port, the Chinese merchants who traded and resided here were mostly, or even exclusively, of the poor class. They were in a sense adventurers, they came to this muddy swamp to make fortunes so as to retire to their native districts where they came from and where they hoped to build their paradise. So the matter of the government of the city did not concern them. At present, we have different classes of people here. We see great and luxurious residences built by them in this port. We see up-to-date mills and factories employing hundreds of hands. Shanghai is their permanent home. Shanghai is the centre of their varied activities. They have not only wealth, they have also knowledge. Some of them are highly trained even in business or professions, while others have their children educated in the best universities of the world to assist them. They are now awakened to the sense of their duties and responsibilities of the government of this great city. Even the workmen have organized themselves and before long they will claim a share in the Municipal affairs. Gentlemen, we are living in a different age and with a different people. If we are far-seeing, we can lead the wealth, knowledge and energy of the Chinese community to a channel which irrigates the fertile and fruit-bearing field of this international community. If we are reasonable and just to each other, there is a great field before us in which Chinese energy and wealth can contribute to no small extent towards the fruit of friendly co-operation of this international community and in which we all gather our harvest."

Thus the problem of the active participation of the Chinese in the Municipal affairs faced again the foreign and Chinese communities, but in spite of the readiness of both parties to settle the matter it was still very far from actual solution. It remained surrounded by the same obstacles of a legal nature, which could not even be overridden by the recognition of China's Ten Points at the Washington Conference and strict observation of the principle that "*the interpretation of instruments granting special rights or privileges shall be strictly construed in favour of the grantor.*"\* There was nothing in the constitution of the Land Regulations which could be interpreted in favour of China. This constitution was a logical result of the exceptional status enjoyed by foreigners by virtue of the Treaties, the provision of which could not be extended to anybody except those expressly mentioned therein. However, this idea escaped the notice of the interested parties, one of which continued to insist that "*Chinese aspirations could only be fulfilled when the foreign community had confidence that their*

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\*Points 5 and 7 of China's Ten Points presented to the International Disarmament Conference at Washington in 1921 by the Chinese Delegation.



*direct participation in the administration of the affairs of the Settlement would not in anywise adversely affect the efficiency of the present administration or the sense of security which it gave,"\** and the other attributed the failure of its aspirations to the selfish objection of the Foreign Community. This obvious misunderstanding was doomed to result soon in an open clash between both sections of the Shanghai cosmopolitan community, the germ of which could already be traced in the agitation connected with the Washington Conference and Municipal legislation in 1921, 1922, 1923 and 1924.† and which attained the nature of an ill-hidden threat "to plan some substantial means" in the protest of the Chinese General Chamber of Commerce, April 12th, 1924.

In effect the Chinese community did not have at its disposal any other legal remedy to attain the desired effect except to resort to "some substantial means," the nature of which did not present any particular mystery. They were the traditional boycott, refusal to pay taxes, closure of shops, strike and rioting: actions which could only be styled as revolutionary, taking into consideration that practically they were directed not only against foreigners and their Governments, but also against the existing order in China, precluding the Chinese in Shanghai from enjoying the same exceptional rights of self-government as the foreigners. Therefore it was quite natural that the demands advanced by the Chinese extremist faction after the unhappy events of May 30th, 1925, regarding the municipal franchise for the Chinese community, were unanimously acclaimed even by most conservative and wealthy Chinese people. They realized that only with the support of the revolutionary masses led by the extremists could they overthrow all legal obstacles standing in the way of their active participation in the self-government of the Foreign Community.

The further existence of the Advisory Committee as a body strictly conforming to the political and legal status in the Settlement could only hamper the victorious march of these revolutionary principles. On June 6th, 1925, the Committee obediently resigned, leaving behind a very peculiar document of its helplessness and want of judgment. It addressed to the Council a letter, in which it stated as the reason of its resignation "the absence of any desire on the part of the Council to punish those who participated in the shooting affray of May 30th, and to do justice to the Chinese."‡

"*To do justice to the Chinese*" meant, of course, to extend to the Chinese the Municipal franchise.

In order to make the real attitude of the leading bodies of the foreign community clear a joint meeting of the British Chamber of Commerce and the China Association passed on August 31st, 1925, a resolution, in which it advocated early application of the terms of the Washington Treaty and expressed sympathy with the idea of Chinese representation on the Municipal Council. This resolution was formally communicated to the Chinese General Chamber of

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\*Mun. Council's Report, 1922, p. 232A.

†Commissioners' of Police Annual Reports, 1921, 1922, 1923 and 1924.

‡Mun. Council's Annual Report, 1925, p. 65

Commerce\* but it could not change the attitude of the Chinese in the Settlement in respect to their further tactics. It assumed the definite form of an unequivocal demand of a full right of participation in the municipal administration on an equal footing with the foreigners.

However, in 1926 the foreign community was not shaken in the least in its resolution to do everything in its power to promote Chinese representation on the Council, realizing full well that without moral support of the Chinese there was no possibility of fostering the progress of the community. In its turn the Council did not like to complicate the matter and accepted the scheme advanced by Messrs. E. S. Little and E. I. Ezra in 1920, which was assured of securing a decided majority of votes.

The attitude of the Council, however, aroused great indignation on the part of the Chinese community and some days before the meeting took place the Chinese General Chamber of Commerce published "*a manifesto setting forth the real Chinese attitude concerning the outstanding questions of the May 30 affair.*"

In the preamble of this manifesto the Chamber of Commerce stated as follows :

"As the anniversary of the May 30 tragedy is fast approaching, and as no satisfactory settlement of the important questions connected with that unhappy affair is in sight, we hereby beg respectfully to make known to the public the real attitude of the Chinese community with regard to those outstanding questions in order that all misunderstandings may be removed and an early and satisfactory settlement of the whole case may be effected.

And further :

(1) As racial equality is absolutely essential to the success of co-operation between foreigners and Chinese in this cosmopolitan city, we appeal to all fair-minded foreigners for the immediate removal of the barriers between the Chinese and foreign communities created by the disastrous policy of racial discrimination in political and social affairs, which has hitherto been pursued with results too well known to need amplification.

(2) In the light of this vital principle of racial equality, and the happy results which it is bound to produce, we hereby place our contention on record that the status of Chinese ratepayers in this International Settlement must be placed on the basis of absolute equality in order to permit them to exercise, without hindrance, their rights in directing the course of municipal affairs of this settlement, and to participate at ratepayers' meetings on the same footing as foreign ratepayers ; and that in the case of Chinese representation on the Municipal Council and the effective participation of Chinese in municipal administration, the Chinese community emphatically protests against any arbitrary decision of the number of seats to be allotted to them, and unequivocally demands that the extent of Chinese representation on the Council should be made proportionate to the amount of taxes they actually pay.

The foreign view on the subject was submitted by the Council to the consideration of the Annual Ratepayers' Meeting on April 15th, 1926, in the form of the following resolution :

"that in the opinion of this meeting the participation of the Chinese residents in the government of the Settlement is desirable ; and that the Council be hereby authorized and instructed to make forthwith representations to

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\*Mr. Yu Ya-ching, Chairman of the Chinese Chamber of Commerce, to the Chairman of the British Chamber of Commerce, September 3rd, 1925.

*the powers concerned with a view to securing the addition of three Chinese Members at an early date."*

The tone of the manifesto and the reference to the events of May 30th contained a thinly veiled threat of the repetition of these events should the foreign community refuse to assent to the Chinese claim. The point of view of the Chinese Community found its reflections in the amendment to the resolution proposed by Messrs. L. K. Kentwell and Russel B. S. Chen, who moved the meeting to alter the wording of the resolution and to substitute the words "with a view to securing the addition of three Chinese Members" . . . with the following passage: "*with a view to hastening the election to the Council of Chinese members with due regard to the taxes paid by the Chinese ratepayers of this Settlement.*"

This amendment, had it been passed, would not only have secured the majority on the Council to the Chinese, but also secured to the Chinese community as a body, the right of a direct franchise in a self-governing foreign community enjoying extra-territorial privileges. It complicated the matter and threatened to place the Chinese Government and the Diplomatic Body in a very difficult position owing to the doubtful possibility of carrying out the proposed measure legally.

Indeed, had this amendment been passed, the position would have become more than delicate. It would appear that the Chinese, renouncing any form of extraterritoriality in principle, pretended to benefit themselves by the practical advantages which it afforded to its holders.

As a matter of fact, the resolution proposed by the Council embodied only expressions of certain opinions and desires of the Foreign Community. The ultimate decision on the subject was in the hands of the Chinese Government and the Diplomatic Body, should the legal consideration prevail upon the revolutionary and arbitrary form of disposal of the problem. But the importance of the foreign ratepayers' view could not be underestimated. It was absolutely necessary for the foreign community to clear once for all this point with no further regard to the methods of selection of Chinese Councillors and the possibility of enacting the reform from a legal point of view.

On April 15th, 1926, the resolution was passed by an overwhelming majority of votes in the wording proposed by the Council, and Mr. S. Fessenden, Chairman of the Council, at the conclusion of the debates, made the following statement:

"We do not fail to appreciate the fact that the day will come when all Chinese territory will be under Chinese control—when Shanghai will be a great cosmopolitan city, the nerve centre of China's foreign trade. But we believe that our Chinese fellow citizens are no less anxious than we ourselves that that end should be attained by evolutionary rather than by revolutionary means."



On January 20th, 1927, the Shanghai Municipal Council announced that the status of the three Chinese representatives who are to be added to the Council is set forth in the appended correspondence :

Shanghai,  
January 13th, 1927.

Sir,—Referring to our conversation over the telephone yesterday relative to the status of the Chinese representatives on the Shanghai Municipal Council I beg to quote below the contents of a letter received to-day from the Commissioner for Foreign Affairs. The letter reads as follows :—

“ With reference to the matter of the three Chinese representatives to be added to the Municipal Council, I should be glad to be informed as to whether their responsibility, position, title and privileges will be the same as those of the foreign councillors of the Council.”

I shall feel much obliged if you will be good enough to let me know, as soon as possible, your view on this point.

(Signed)

N. AALL,  
*Consul-General for Norway and  
Senior Consul, ad interim.*

S. FESSENDEN, Esq.,  
Chairman,  
Shanghai Municipal Council.

Shanghai,  
January 14th, 1927.

Sir,—I have the honour to acknowledge receipt of your letter of January 13, on the subject of the status of the three Chinese Members to be appointed on the Council.

In reply, I have the honour to request that you will inform the Commissioner for Foreign Affairs, in response to his enquiry, that it is the Council's intention that the “ responsibility, position, title and privileges ” of the three Chinese Members of Council shall be “ the same as those of the Foreign Councillors.”

(Signed)

S. FESSENDEN,  
*Chairman.*

N. AALL, Esq.,  
Consul-General for Norway and Senior Consul.

The letter of the Chairman of the Municipal Council was communicated through the Commissioner for Foreign Affairs to the Chinese Ratepayers' Association, which, after negotiations with the Chinese General Chamber of Commerce, resolved to elect three members of the Association to serve on the Municipal Council as Chinese Councillors.

However, at the meeting of the Association, January 8th, 1927, it was unanimously decided that, in view of the proposal by Great Britain to return all Concessions to China made in

connection with the settlement of the Hankow incident, the Rate-payers' Association should abandon the question of electing three members of the Association to the Shanghai Municipal Council pending a settlement between the Chinese Government and the Treaty Powers with regard to the municipal administration of the Settlement. It was suggested that the Association should elect a provisional committee of nine in order to be ready "to assume an equal share of the responsibility in the administration of the municipal affairs and the maintenance of peace and order in the Settlement with the foreign members of the present Municipal Council."

The election took place on February 15th, and the following gentlemen were elected to form the Provisional Committee :

Dr. C. T. Wang, LL.D., former Minister of Foreign Affairs and Premier, chairman ; Mr. Yu Ya-ching, former Chairman of the Chinese General Chamber of Commerce ; Mr. Sung Han-chang, Manager of the Bank of China and former Chairman of the National Associated Chambers of Commerce ; Mr. S. U. Zau, Director of the Chinese Chamber of Commerce and the Chinese Y.M.C.A. ; Mr. S. S. Fung, Chairman of the Shanghai Paper and the Cantonese Guilds ; Dr. David Z. T. Yui, D.LITT., General Secretary of the National Committee of Y.M.C.A.'s in China ; Mr. Wang Hsin-san, President of Kuang Hua University and former Commissioner for Foreign Affairs in Chekiang ; and Messrs. Pan Min-sun, Hsu Hsin-lu and Hsiang Chung-mao.

## CHAPTER XIV.

### RENDITION OF THE MIXED COURT, 1927.

It was natural and inevitable that the problem of the return of the Mixed Court to the control of the Chinese Authorities, which, since 1911, had aroused a comparatively limited interest and discussion amongst various Chinese political and judicial circles,\* should become, after the May incident, the obsession of the masses.

Chinese Efforts to  
secure the rendi-  
tion of the Court  
—1925.

The prosecutions for offences against peace and order of the Settlement, undertaken by the Municipal Police in the Mixed Court against the propagandists of the social revolution and anti-Japanese strikes in the earlier part of 1925, affected vitally the activity of the ultra-radicals and inspirators of the anti-foreign movement, not only in Shanghai but also throughout China. The Mixed Court appeared, to the Chinese public mind, to be an obedient tool in the hands of foreigners for the suppression of China's national movement, and as such must be at any cost extracted from their administration and placed entirely under the control of Chinese National Authorities favourably inclined towards this movement.

The subsequent trial of the students and rioters added further weight to the necessity of securing the Court without further delay. It ensured a crushing blow to the prestige of the foreign administration of the Settlement, consequent upon the complete exoneration of the accused, and placed the entire guilt on the Municipal Police.

One can imagine the disastrous effect for the foreigners in China if a case like the case of the students charged with rioting on May 30th, amid the general excitement all over China, had been brought before a Court inspired with the same anti-foreign tendency. But, fortunately, the aspirations of the Chinese extremists failed to materialize, and during the whole of that critical period the Court remained in the hands of an international body, which did not permit it to be used as machinery for a political struggle.

It should be admitted that the Chinese Government made every effort to secure the immediate and unconditional return of the Court to their authority. The special Chinese delegates despatched by the Peking Government to investigate the shooting affair in Shanghai received definite instructions to that effect, and, when it appeared to be impossible to achieve this end, as the Mixed Court problem was not directly connected with the incident and exceeded the competence of the Diplomatic Delegation, the Chinese delegates made an official statement that "the rendition of the Mixed Court or setting a fixed date for doing so" was one of the most essential points to a permanent understanding between the Chinese and Foreign Communities in Shanghai.

On June 24th, 1925, the Chinese Government repeated its demand for the return of the Mixed Court and, this time, the

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\*See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 271-282.



Diplomatic Body expressed its readiness to enter into, or better to say, renew the negotiations with regard to the settlement of the Mixed Court issue, interrupted in 1924, on the understanding that it would form a separate question having no connection whatsoever with the settlement of the May incident.

This gave rise to a natural objection on the part of the Chinese Government which wished to see all matters settled whilst the flood of enthusiasm was still making, but, after a short discussion, the dispute was tided over,\* the resignation of the French Minister from the Diplomatic Inquiry Commission and the proposition of holding an International Inquiry into the May 30th incident barring further negotiations.

Chinese Government measures to accelerate the rendition of the Court, 1925

Meanwhile, the agitation around the Mixed Court originating in Shanghai received the powerful support of the Chinese Ministry of Justice, which may appear in the eyes of the foreigners nothing less than a very clever plan set in motion, rendering the operation of the Mixed Court impossible and compelling the foreigners to capitulate. However, in fact, it was just a logical development of the principle expressed in the well-known explanation of the Supreme Court No. 1370, in which it refused to recognize the Mixed Court as being properly organized in conformity with Treaty provisions.†

On June 27th, 1925, there appeared in the "Government Gazette" at Peking, published by order of the Minister of Justice for general information, Instructions of the Supreme Court to the Chekiang High Court, a statement that "*as the Shanghai Mixed Court is not a legally constituted judicial tribunal, any decision given in a civil matter by the Court cannot be recognised as to render assistance by way of execution.*"‡

It must be recognised that the action of the Ministry of Justice succeeded only partly, but still the position of the Court became very difficult. The execution of orders was strictly confined to the limits of the Settlement and the French Concession, while in the Native City of Shanghai it met with the obstruction of the local Chinese Authorities.§

\*The Chinese Government appointed a special Committee to deal with the problem. This Committee consisted of nine members including the well-known Chinese expert, Mr. Chang Yao-tseng, Minister of Justice, and was authorized to devise means to secure the complete and unconditional surrender of administration of justice in the Settlement.—AUTHOR.

†Shanghai: Its "Mixed Court and Council," 1842-1924, p. 275.

‡C.C.C. 3345a, Tsung Nyl Stocking Factory *et al* vs. Li Tsze-ming before Messrs. Li and C. E. Whitmore, British Assessor. In reply to the Court's request to seal up the premises of the judgment debtor, Li Tsze-ming, situated in Lauh-Sing-hsien, Chihli, the authorities of the latter informed the Court through the Commissioner for Foreign Affairs on July 25th, 1925, that "the 'Government Gazette' of June 27th, 1925, recorded that Instruction No. 1932 issued by the Supreme Court to the Chekiang High Court is to the effect that as the Shanghai Mixed Court is not a legally constituted judicial Court the decision rendered in a civil matter by that Court cannot be recognised as to render assistance by way of execution."

§C.C.C. 6492,—Fukuway & Co. vs. Nyoen Fang-zhang, before Messrs. Oen and A. Tajima. On August 7th, 1925, the Chekiang Procurator's Court informed the Mixed Court through the Commissioner for Foreign Affairs that instructions had been received from the Chekiang High Court to the effect that "the Shanghai Mixed Court is not a legally constituted Court. It possesses no authority whatever to effect any arrest, and therefore the Procurator's Court has no obligation whatever to render any assistance."

§C.C.C. 3581a—M. Yeh vs. Yeh Faung-tsuh, Commissioner for Foreign Affairs to the Senior Magistrate, March 14th, 1925.

C.C.C. 2886a,—Li Kya-yuin vs. Sung Kyok-tsho, Commissioner for Foreign Affairs to the Senior Magistrate, July 8th, 1925.

This change in the attitude of the local Chinese authorities, even two months ago very courteous towards the Court, finds explanation in the letter of the Commissioner for Foreign Affairs to the Senior Magistrate of the Court, August 21st, 1925, in which he stated that "he is unable to render any assistance to the Court in execution of an order conflicting with the instructions of the Ministry of Foreign Affairs."

The instructions of the Ministry of Foreign Affairs referred to in the above cited letter contained an order of the Minister of Foreign Affairs "to have the case (Rosenberg China Co. vs. Russian Volunteer Fleet) transferred at once to the native District Court."

On the other hand, the same letter of the Commissioner for Foreign Affairs reveals the fact that this somewhat peculiar interference with the administration of justice on the part of the Ministry of Foreign Affairs was due to the pressure brought to bear upon the Ministry by the U.S.S.R. Ambassador at Peking.

As a matter of fact, the attitude of the Soviets *vis-à-vis* the Court has, from the very beginning, been one which can be characterised as irreconcilable. In all cases, where the direct or indirect interests of this State have been involved, and where the Court assumed jurisdiction, the representatives of the Soviets lodged protests with the Chinese Government. This, coupled with the persistent pleas of jurisdiction in open Court, in the presence of a large Chinese audience, could also be interpreted as a cleverly conducted anti-Mixed Court propaganda, while in reality, it was also the logical result of the Sino-Soviet Treaty of 1924.\*

The combined actions of the Chinese Government and judiciary and the anti-Mixed Court agitation, coupled with the attitude of the U. S. S. R. (the importance of which cannot be underestimated in view of their influence upon some of the Chinese high officials at Peking and student masses) resulted in the Mixed Court's authority being shaken in the eyes of the native public to such an extent as to stop entirely for a period the filing of new petitions in Chinese civil cases.

However, taking into account the deadlock in the settlement of the incident of May 30th, and the coming International Inquiry, the Diplomatic Body at Peking decided, at the instance of the Japanese Minister, on August 18th, 1925, to accelerate the discussion of the rendition of the Court.

Treaty Powers Ministers' consent to settle the problem, August 18th, 1925. Note of August 22nd, 1925.

Commander V. Cerruti, Italian Minister and Dean of the Diplomatic Body, handed to the Waichiaopu on behalf of the Treaty Powers a Note, dated August 22nd, 1925, in which the Powers informed the Chinese Government of their intention of renewing the discussion of the Mixed Court problem. It appeared, however, that there was a certain difference of opinion amongst the members of the Chinese Commission appointed to discuss the rendition of the Court, which again delayed the opening of negotiations.

C.C.C. 3813a.—Tuh-Ziang Native Bank.—Commissioner for Foreign Affairs, to the Senior Magistrate, July 25th, 1925.

\*In his Report, April 1925, the Registrar of the Court records a case in which the U.S.S.R. Consulate-General at Shanghai stated in reply to the request of the Court to deport a criminal of Russian nationality that "owing to the absence of any arrangement between the Court and the Consulate, the latter does not recognize the Police Charge Sheets and will not execute any judgment of the Court."—AUTHOR.

There was a growing opinion in Chinese judicial circles in favour of entirely abolishing foreign consular jurisdiction and of inaugurating at Shanghai a Special Court for the hearing of cases, in which Chinese and foreigners were concerned. It was suggested that citizens of countries which did not enjoy extraterritorial privileges should be dealt with by the ordinary Chinese Courts but that defendants enjoying extraterritorial privileges should be tried by the Special Court referred to, and an official of their nationality should be entitled to occupy a seat on the Bench, without, however, the right of interfering in the proceedings.

This view was favoured by the Chinese jurists and lawyers at Shanghai, while Dr. Wang Chung-hui, the well-known Chinese jurist and head of the Chinese delegation to the Exterritoriality Conference, was in favour of "mixed trials," i.e. that all cases in which foreigners were concerned should be tried by Chinese Judges with the assistance of Consular Representatives. Both parties un-animously agreed that the Mixed Court should not be taken over but should be abolished, and a new Special Court should be established.

Of course, this extension of the original question required new arrangements and considerable time, while the readiness of the foreigners at large to meet the Chinese wishes and to settle the matter as soon as possible was apparent.

The opportune and tactful move on the part of the oldest and most influential foreign bodies, which we have already mentioned in one of the preceding chapters, dispelled the last doubt in regard to the sincerity of the foreigners towards the Chinese.\*

The boycott movement against the Mixed Court received a very severe shock. It was obvious that the declaration of the British Chamber of Commerce and China Association, which, more than any other bodies in China, were interested in the *status quo* of the Mixed Court, could not remain without effect upon the course to be assumed in solving the Mixed Court problem.

However, the relations between the Chinese Government and the Diplomatic Body at Peking still left much to be desired, and necessitated a further exchange of notes.

On September 30th, 1925, Mr. Shen Jui-lin, Minister of Foreign Affairs, addressed a note to Mr. W. J. Oudendijk, Netherlands' Minister and Senior Minister of the Treaty Powers, concerning the rendition of the Court, and the Foreign Ministers again confirmed their willingness to see the question settled :—

"On the other hand" stated the Ministers, "the interested diplomatic representatives are aware of the fact that the rendition of the Mixed Court and the question of the representation of Chinese citizens on the Municipal Council of the International Settlement of Shanghai have been advanced by the Chinese community of that port. In this respect it is a pleasure to me to reiterate to Your Excellency that the above-mentioned diplomatic representatives are ready to conduct with you to a successful termination the negotiations concerning the rendition of the Mixed Court, which were begun some time ago."†

\*In a letter to the "Peking Leader" published on September 5th, 1925, Admiral Tsai Ting-kan stated as follows: "I have always maintained that the British are just people. The sound resolution of the British Chamber of Commerce and the Shanghai Branch of the British China Association is a splendid gesture proving that the British will meet us more than half way."

†Diplomatic Body to the Waichiaopu, October 2nd, 1925.

Exchange of further notes, September, October, 1925



However, in spite of this exchange of mutual courtesies, the atmosphere remained too dense to enable the interested parties to discuss the problem. The Ministry of Justice continued to maintain its irreconcilable attitude with regard to foreign jurisdiction in China, and on September 27th, the "Government Gazette" at Peking published a Circular Order of the Minister of Justice, dated August 27th, No. 612,\* in which it was *inter alia* stated as follows :

"If cause be sought for the Shanghai affair, which violated the canons of humanity, and the subsequent incidents at Hankow and the Shameen, it will be found that these occurrences all have their root in the evil of Consular Jurisdiction.

*"That the slayer shall die is a principle common to Chinese and foreign ideas, but those foreign Consuls who possess judicial power are open to corruption and the consequence is that foreigners who kill or wound Chinese not only go unpunished but are spared in every way, which amounts to a premium being put on murder.*

*"Unless, therefore, jurisdiction over these foreigners be recovered, the situation is fraught with untold dangers."*

This, of course, resulted in a strong protest being lodged by the Treaty Powers' Ministers with the Waichiaopu on October 8th, 1925, and in the latter's courteous reply, containing all sorts of excuses and explanations. But still under these circumstances, it was hardly to be expected that any progress in the settlement of the Mixed Court problem could be reached.

On the other hand, the question of the International Inquiry into the circumstances of the incident of May 30th,† the Tariff Conference, opened on October 26th, 1925, and the coming Ex-territorial Conference occupied the attention of the interested parties, shifting the problem of the Mixed Court to the background, and automatically associating it with the results of these international matters.

However, the findings of the International Inquiry Commission were responsible for the question of the rendition of the Court receiving a new impulse

International Inquiry and the Mixed Court problem.

"That those in authority should as speedily as possible bring to a close the negotiations relating to the status and character of the Mixed Court" stated Judge Finley Johnson, concluding his report, and his statement was supported by Sir H. G. Gollan, who, enumerating the causes of dissatisfaction and anti-foreign feeling in the minds of the Chinese, also indicated the unsettled problem of the Mixed Court.

The negotiations were renewed but proceeded very slowly. The Chinese, encouraged by the apparent success of the movement, advanced such terms as to be tantamount to the abrogation of all treaty provisions concerning the foreign administration in the International Settlement.

The Chinese representatives insisted upon embodying in the agreement concerning the rendition of the Court the following stipulations :

Chinese terms.

- (1) That no Foreign Registrar shall function in connection with the Court in any capacity.

\*Mr. Yang Shu-kan, Minister of Justice, an old member of the Kuomintang and close follower of Dr. Sun Yat-sen.

†Senior Minister's note of the Washington Treaty Powers to the Waichiaopu, September 15th, 1925.

(2) That the prison used by the Court shall be under the complete control of the Court, although staffed by Municipal Police detailed for this purpose.

(3) That all prosecutions in police and criminal cases shall be conducted solely by the procurator of the Court, and that the police shall not be empowered to present evidence directly to the Court.

(4) That no Municipal bye-law shall be enforceable by the Court unless previously approved by the Chinese Government.

(5) That the phrase "laws and ordinances in force in China" shall be used in the agreement.

(6) That the Chinese rules of procedure shall govern the Court without modification, except in cases especially provided in the agreement.

(7) That in cases, in which the Foreign Assessors have to sit, their signature to the judgment shall not be essential in order to make it valid.

(8) That the Court shall have the power to search foreign premises upon addressing a mere notification to the Consul concerned.

(9) That lawyers of nations enjoying extraterritorial rights shall appear in Court on behalf of nationals of such Powers only, and shall be governed by the Chinese regulations in all matters connected with the practice of their profession in the Court.

(10) That except as otherwise provided for in the agreement concerning the rendition of the Mixed Court, which has to be concluded, all Chinese laws and ordinances in force shall be applied in the Court.

The exceptions concerning the application of Chinese laws and ordinances consisted of some provisions which were to be made in the agreement in respect to the process and execution of the Court's orders and decisions and which were to be entrusted to the Municipal Police.

It is evident that the Treaty Powers' Ministers could not agree to these terms, but the question concerning the Registrar of the Court might be overcome by some arrangement in regard to the executions of judgments and orders of the Court and the safe-keeping of deposits in cases in which foreign interests were involved.

The question of the control of the prisons also did not present any insurmountable difficulty, particularly taking into consideration that the latter could be operated under Chinese Prison Regulations and under the supervision of the Court, and that the prisons, could be utilised only for minor offenders, while the long-term sentences could be served in Chinese prisons outside the Settlement.

But it seemed to be absolutely impossible for the foreigners under existing methods of administration in the Settlement and the general political situation in China, to assent to the function in the Settlement of an independent Chinese Procurator, vested with the power of arresting, searching and detaining people against whom any criminal complaint was lodged or who were suspected of having committed any crime.

Furthermore, it was also hardly possible for the Treaty Powers to agree to the stipulation proposed by the delegates of the Waichiaopo that all Municipal Bye-laws and Regulations, in order to be enforced by the new Court, must be first approved by the Chinese Government, or the Court must be invested with the authority to declare them *ultra vires*. This was against the provisions of the Land Regulations, which did not require for the Bye-laws and Regulations any particular sanction by the Chinese Government.

As a matter of fact, in the first place, the Foreign Representatives\* informed the Chinese delegates that as long as the municipal authorities were vested with their present powers and responsibilities over and toward the International Settlement, no portion of these powers or responsibilities could be delegated to an official like a Procurator who was part of the political organization with which the Municipal authorities had no organic connection.

Foreign objections to the Chinese demands.

As far as the question of the application of the Municipal Bye-laws and Regulations was concerned the Foreign Delegates pointed to the authority of the Municipal Council under the Land Regulations to enact Bye-laws, which could not be in any way affected by any agreement concerning the Court. But if the Court should find any of the Bye-laws objectionable or repugnant to Chinese law, it would always be able to bring them up through the proper channels for diplomatic discussion (Art. XXVIII of the Land Regulations).

Considerable difference of opinion was also aroused in connection with cases in which the foreign Assessors were to sit, and the extent of their power, the arrest of Chinese in the employ of foreigners enjoying extraterritorial rights, the search of their premises, the appearance in Court of foreign lawyers, and the application of Chinese Law and Ordinances.

The Chinese refused to recognise any element of public interest pertaining to the Foreign Community enjoying as a body extraterritorial privileges in cases wherein no direct interest of the Treaty Powers nationals was involved. They consented to the presence of the foreign Assessor only in those criminal and civil cases in which the aggrieved party was the national of a Power possessing the right of consular jurisdiction. To this the Foreign Delegates refused to agree, assenting only to the following changes in the previous practice of the Court :

(1) That Assessors should be present to "watch the proceedings" merely. This meant that they would not longer be co-judges, but would only require to be informed in regard to the formulation of the judgment in order that they might indicate their dissent therefrom, or indicate their concurrence by countersigning the judgment.

(2) That foreign Assessors should be withdrawn from Chinese civil cases.

(3) That foreign Assessors should be withdrawn from cases involving nationals of Powers not possessing the right of consular jurisdiction.

(4) That in criminal cases wherein the aggrieved party was the national of a Power possessing the right of consular jurisdiction, the Assessor appointed by the Consuls of the international Powers should be replaced by an Assessor appointed by the Consul of the nationality of the aggrieved party. In this connection, the foreign Delegates emphasized the fact that the Assessors asked for in criminal cases were not designed to fill the role of the Assessors provided for by the Treaties but would appear in the court on behalf of the administrative officials of the International Settlement.

The Foreign Delegates stated, furthermore, that they would be willing as a distinct concession, and only in recognition of concessions on the part of the Chinese Delegates, to waive the presence of foreign Assessors in cases wherein extraterritorial nationals were plaintiffs and non-extraterritorial foreigners were the defendants.

\*Messrs. W. R. Peck (U.S. Legation), G. Ros (Italian Legation), H. Lenice (French Legation), Sawada (Japanese Legation) and E. Teichman (British Legation).



The Foreign Delegates also pointed out that a warrant for the arrest of Chinese employees of an extraterritorial national must be countersigned by the Consul of the national concerned, and that in case of a search, application must be first made to the competent Foreign Court and its proper order obtained.

The provision concerning the practice of foreign lawyers was also considered to be unacceptable.

This provision stated *inter alia* that—"In connection with the practice of their profession in the Court, the foreign Lawyers shall conform to the rules and regulations in force governing Chinese lawyers," and, thus, embodied the whole practice of the profession including the contractual relations with the lawyers' foreign clients.

As far as the application of Chinese Law and Ordinances was concerned, the Foreign Delegates suggested the following provision to be included in the agreement dealing with the rendition of the Mixed Court :

"All codes or ordinances applicable at the present time in other Chinese courts and those that may be *constitutionally* enacted and promulgated in the future shall be applicable in the Court of Justice in the Shanghai International Settlement, subject to the provisions of the Treaties, the Land Regulations and the Bye-laws of the Settlement, and the terms of this Agreement."

The Chinese Delegates objected to the word "constitutionally." They suggested as an alternative "*duly*," but the Foreign Delegates insisted on the preservation of this expression in view of the fact that the Commission appointed to examine into extraterritorial jurisdiction in China had discovered that the laws and ordinances now enforced in Chinese courts had been enacted and promulgated in a variety of ways, sometimes failing to conform to the requirements of the Chinese Constitution, which places the litigants in Chinese courts, so far as they were dependent upon the laws enforced by them, upon too uncertain a basis.

All these discrepancies and divergence in opinions caused the Ministers of the Treaty Powers to admit frankly the fruitlessness of further discussions, which came to a complete deadlock in the spring of 1926.\*

Consular Body at Shanghai undertakes to settle the problem with the local Chinese Authorities, April, 1926.

Meanwhile, the Foreign Authorities in Shanghai and the local Provincial Administration were anxious to see the matter settled in conformity with the general wishes of the Foreign and Chinese communities.

At the end of April, Dr. V. K. Ting, Director of the Directorate of the Port of Shanghai and Woosung and Mayor of Greater Shanghai, and Mr. Hsu-yuan, Chinese Commissioner for Foreign Affairs at Shanghai, acting under instructions of Marshal Sun Chuan-fang approached the Consular Body at Shanghai with a view to the settlement of the matter locally, and with no regard to other outstanding Sino-Foreign problems.

The proposition was readily accepted, and the consent of the Ministers of the Treaty Powers was obtained subject to the *proviso* that any arrangement reached between the Consular Body and the Provincial Authorities was to be sanctioned by the Treaty

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\*Senior Minister's Circular, May 22nd, 1926.

Powers' Ministers. As far as the Chinese Provincial Authorities were concerned, they seemed to be empowered by the Waichiaopu and the Ministry of Justice with all the requisite authority to enter into any agreement with the Consular Body concerning the administration of Chinese justice in the Settlement, which would not affect the future arrangement regarding the extraterritorial jurisdiction of the Treaty Powers that might be reached between them and China.

Thus, the Mixed Court problem, which, as we have already mentioned, was for a moment raised to the importance of an international issue, was brought down again to a purely local question.\*

This enabled the Consular Committee, appointed by the Consular Body to conduct the negotiations with the Chinese on its behalf,† to confine themselves merely to the practical side of the issue, and to overcome many of the difficulties which appeared to be insurmountable at Peking.

In the light of local affairs and relations many of those complicated questions, which proved to be a stumbling block for the Legations' Delegates and the Waichiaopu Commission, appeared to be entirely immaterial. The concessions, which were inevitably to be made by the Consular Body in favour of the Chinese, appeared to be counterbalanced to a large extent by the recognition of the public interest of the Foreign Community, as a body, on the latter's part, the inauguration of a Court of Appeal, and the appointment of a foreign Chief Clerk, which ensured the safety of deposits from any attempt on the part of the Chinese militarists to convert them to their own ends.

However, the publication of the draft agreement concerning the terms of rendition of the Mixed Court aroused considerable criticism on the part of foreign legal circles in Shanghai, which appointed a special International Committee to prepare a report on the subject.‡

Foreign Practitioners' of the Mixed Court Memorandum, July 1926.

Furthermore, it was decided by the Foreign Practitioners of the Mixed Court to send a delegation to Peking to discuss the question with the Ministers of the Treaty Powers.§

The Memorandum, which this delegation submitted to the Ministers, contained very interesting points regarding the rights of the foreign lawyers to continue their practice in the proposed new Court, viz :—

- (1) That the foreign lawyers have acquired from the Chinese Government the inalienable right to appear in all cases,|| and that the Chinese Law regulating Lawyers enacted in 1917, according to which only Chinese citizens can become lawyers, does not offset the above-cited fact, and cannot be made retroactive.\*\*

\*See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 50-52.

†Mr. E. S. Cunningham, U. S. Consul-General, Sir Sidney Barton, H.B.M.'s Consul-General, Mr. S. Yada, Japanese Consul-General, Mr. F. E. H. Groenman, Netherlands Consul-General, and Mr. F. de Paula Brito, Portuguese Consul-General.

‡This Committee consisted of the following legal practitioners: American, Messrs. S. Fessenden, F. W. Hadley and R. T. Bryan, Jr.; French, Messrs. Du Pac de Marsoulles and M. Brault; British, Messrs. R. G. McDonald and A. M. Preston; Japanese, Mr. T. Murakami; Portuguese, Mr. J. M. Tavares; Italian, Dr. O. Fischer.

§Messrs. A. M. Preston, H. D. Rodger, A. Du Pac de Marsoulles, M. Murakami and Dr. O. Fischer.

||See "Shanghai: Its Mixed Court and Council"—1842-1924. pp. 203, 204.

\*\**Ibid* p. 106.

(2) That the Chinese, Germans, Russians and citizens of Non-Treaty Powers have a right to select their legal advisers among the foreign lawyers if they wish to do so.

(3) That the foreign lawyers are the channels through which the ideas of modern jurisprudence find their way into the Chinese code and judicial system.

(4) That the proposed new Court will be a special Court of a type not included in the general Chinese Judicial System (through which, therefore, the Chinese Regulations concerning Lawyers of 1917 cannot be applied) and will function within an area in which special conditions prevail, not found elsewhere in China.

(5) That the lawyers of all nationalities in Shanghai, Chinese included, provided that they are duly qualified by their own Law, can appear in all Foreign Courts in China. In most Courts the English language may be spoken, also by courtesy, when the lawyer concerned is not familiar with the language of the country in whose Court he appears. This is not a matter of courtesy but a necessary consequence of the peculiar conditions existing in the *International Settlement*.

Extending these arguments, the Foreign Practitioners of the Mixed Court submitted that the foreign lawyers are fitted more than anybody else to cope with the legal results of the peculiar conditions existing in the International Settlement.

The business of Chinese at Shanghai has become exceedingly specialised and intricate by constant contact with Western methods. Insurance, Shipping, Banking, Bills of Exchange and other commercial documents, Title-Deeds, and so on, all involve the principles of Western law, all highly specialised subjects, which require the services of a foreign lawyer intimately acquainted with them.

"It is hardly possible to imagine any case," states the Memorandum, "even between Chinese, occurring in the Settlement, which does not affect foreign interests, whether directly or indirectly. Foreign and Chinese interests are very closely interwoven, and anything which tends to affect the business stability of a Chinese resident almost certainly affects the interests of some foreigner who either does business with or employs him.

"It is understood that one of the chief arguments against continued rights of Foreign Practitioners by the Chinese is that they are not subject to Chinese Law. It is a truism that all Practitioners are subject to the disciplinary requirements of any Court in which they can appear, either by courtesy or otherwise, and can be suspended for any length of time for any moral delinquency or insulting behaviour."

In conclusion of their Memorandum the Foreign Practitioners referred to the "Provisional Regulations Governing the Appearance in Court of Lawyers of Non-Extraterritorial Powers,"\* which conferred a certain limited right of audience to lawyers of nations which do not enjoy extraterritorial rights, and pointed to the fact that no right of audience whatsoever is reserved by Chinese Law for other foreign lawyers who ought logically and according to the privileges of the most favoured nations to receive at least the same treatment as non-Treaty nationals.

One may agree or not with the conception advanced by the Foreign Practitioners of the Mixed Court in favour of their right to continue their practice in the new Court, which aroused loud protests

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\*Order of the Ministry of Justice, No. 1186, December 24th, 1920, amended by Order No. 155, February 25th, 1922.



on the part of the Chinese Bar Association in Shanghai,\* but as far as their observations concerning the general conditions of administration of justice in China and the criticism of the terms of the proposed agreement were concerned, they deserved more attention than was afforded to them by the interested parties.

It was an expression of the views of a body which, in fact, since 1866† has been in direct and intimate touch with the Chinese administration of justice and which, it should be admitted, was more than any foreign body in China qualified to be heard on the subject.

Furthermore, the proposed agreement contained no provision regarding (a) the practice of the foreign lawyers ; (b) the existing part-heard cases ; (c) the sanctity of decisions given since 1911, which was very important in view of the fact that the Chinese Supreme Court at Peking declared the Mixed Court as not a legally constituted Court ; (d) the rules of procedure to be applied by the Court ; (e) the power of the Senior Consul's Assessor in relation to cases involving contravention of Bye-laws ; (d) the procedure of countersigning of warrants, etc., by the Consuls, which according to the wording of the agreement appeared to be left without the option of refusal ; (e) the safeguarding of the Judges of the new Court from any pressure on the part of the Provincial Authorities (Para II of the Agreement) ; (f) the doubtful probity of the proposed "Judicial Police," in view of the proved dishonesty of the former "runners" whom they would replace.

A superficial perusal of these observations shows their importance, but the Consular Body had no other option but to follow the course which was adopted at the start of the negotiations. For any attempt to limit the broad terms of the arrangement on their part, might easily have resulted in a new deadlock, interpreted by the Chinese as a sign of foreign perfidy.

The draft agreement signed by the Consular Body and the Representatives of the Provincial Authorities obtained the sanction of the Treaty Powers Ministers and Marshal Sun Chuan-fang, and on September 27th, 1925, was published for general information.

The agreement states as follows :—

- 1.—(I) The Kiangsu Provincial Government in place of the Mixed Court in the International Settlement at Shanghai will establish the Shanghai Provisional Court. With the exception of cases which in accordance with the treaties involve the right of Consular jurisdiction, all civil and criminal cases in the Settlement shall be dealt with by the said Provisional Court. Provisional Agreement for the Rendition of the Shanghai Mixed Court.
- (II) All laws, including laws of procedure, and ordinances applicable at the present time in other Chinese Courts as well as those that may be duly enacted and promulgated in the future shall be applicable in the Provisional Court, due account being taken of the terms of the present agreement and of such established rules of procedure of the Mixed Court as shall be hereafter agreed upon.
- (III) In criminal cases which directly affect the peace and order of the International Settlement, including contraventions of the Land Regulations and Bye-Laws of the International Settlement, and Criminal Cases Affecting Foreigners.

\*The Chinese Bar Association and the Federation of College Faculties of Shanghai issued a statement to the effect that they would resolutely oppose the appearance of the foreign lawyers in the Mixed Court after its rendition as contrary to the provisions of the Chinese Law and the interests of the Chinese community at large.—AUTHOR.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 61.

in all criminal cases in which the accused is in the employ of a foreigner having extraterritorial rights, the Senior Consul may appoint a Deputy to sit with the Judge to watch the proceedings. The concurrence of the Deputy shall not be necessary for the validity of the judgment, though he shall have the right to record his objections, he shall not, however, put any questions to the witnesses or prisoners without the consent of the Judge.

(IV) All summonses, warrants and orders of the Court shall be valid after they have been signed by a Judge. All such summonses, warrants and orders shall be numbered for record by the Chief Clerk before service. When the summons, warrant or order is to be executed on premises occupied by a foreigner having extraterritorial rights, the Consul or other appropriate official of the Power concerned shall on presentation affix his counter-signature without delay.

Foreign Civil  
Cases.

(V) In cases in which a foreigner having extraterritorial rights or the Shanghai Municipal Council is the plaintiff in a civil action and in criminal cases in which a foreigner having extraterritorial rights is the complainant, the Consul of the nationality concerned or the Senior Consul may send an official to sit jointly with the Judge in accordance with the provisions of the treaties.

(VI) A Court of Appeal shall be established in connection with the Provisional Court to deal with criminal cases which directly affect the peace and order of the Settlement and with mixed criminal cases. The President of the Provisional Court shall act concurrently as President of the Court of Appeal. No appeal shall be allowed in cases in which the penalty is below the maximum imprisonment of the fifth degree nor in cases under the Land Regulations and Bye-Laws of the International Settlement.

In all cases in which a Senior Consul's Deputy sat in the original hearing a different Deputy shall sit in the appeal, appointed in the same way and having the same rights as the original Deputy. In the same way a different Consular official shall sit in the appeal in mixed criminal cases.

Court of Appeal.

(VII) The President and Judges of the Provisional Court as well as the Judges of the Court of Appeal shall be appointed by the Kiangsu Provincial Government.

2.—In cases involving imprisonment for ten years or more and in cases involving the death penalty, the Provisional Court shall report the same to the Kiangsu Provincial Government for approval. In cases in which the Provincial Government refuses its approval, the Provincial Government shall give its reasons and order the Provisional Court to rehear the case and again submit the judgment to the Provincial Government. All criminal cases in which the infliction of the death penalty has been approved shall be remitted to the Chinese authorities, outside the Settlement for the execution of such penalty. Inquests and autopsies (*Chien Yen*) in the Settlement shall be held jointly by the Judges of the Provisional Court and the Deputies appointed by the Senior Consul.

Prisons.

3.—The prisons attached to the Provisional Court, with the exception of the House of Detention for civil cases and the women's prison which are to be separately provided for, shall be under the charge of the Municipal Police specially detailed for the purpose, but they shall be operated as far as practicable in conformity with the Chinese Prison Regulations and subject to the supervision of the Court. The President of the Provisional Court shall appoint a visiting Committee, which shall include a Deputy of the Senior Consul, to make investigations from time to time and if it is considered that there are any respects in which the control over the prisoners is unsatisfactory, the same shall be reported to the Court, whereupon the Municipal Police shall be charged by the Court to make the necessary rectification which the said police shall carry out without delay.

Police to Serve  
Warrants.

4.—All summonses, warrants and orders issued by the Court shall be executed by the judicial police who shall be detailed for this duty by the Municipal Police and be directly responsible to the Court in the execution of their duties as judicial police. The Municipal Police shall

render full and prompt assistance in such matters as may be requested of or entrusted to them by the Court, and when the Municipal Police arrest any person, he shall, within 24 hours, exclusive of holidays, be sent to the Court to be dealt with failing which he shall be released.

5.—In all mixed civil cases where there has been a Consular Official sitting jointly with the judge, the appeal shall be made to the office of the Commissioner for Foreign Affairs, acting with the Consul concerned according to the treaties, but such cases may be turned over to the Provisional Court for retrial by a different judge, the original Consular official being also changed. In the event of a disagreement between the Commissioner for Foreign Affairs and the Consul in respect of the appeal in a case which has been retried, the judgment given at the retrial shall stand. No Connection with.

6.—The financial affairs and such administrative work of the Court as shall be determined by a joint commission shall be entrusted to a ~~Chief Clerk~~ who shall be recommended by the Senior Consul and appointed by the Provincial Government on the receipt of a petition from the Court. He shall be subject to the supervision and orders of the President of the Court and shall have charge of the staff and exercise proper supervision over the Court finances. If the Chief Clerk is found to be incompetent or remiss in his duty the President of the Court may reprimand him, and if necessary remove him from office with the consent of the Senior Consul. Internal Administration.

7.—The foregoing six articles, forming the Provisional Agreement for the rendition of the Mixed Court to the Kiangsu Provincial Government shall be in force for three years, dating from the day on which the Mixed Court is handed over. Within this period the Chinese Central Government may at any time negotiate with foreign Ministers concerned in Peking for a final settlement, which if agreed upon between the Chinese Central Government and the said Foreign Ministers shall replace the present Provisional Agreement. If at the end of three years no final settlement has been reached in Peking, the present Provisional Agreement shall continue to be in force for another three years. At the end of the first three years, however, the Kiangsu Provincial Government may propose any modifications of the present Agreement provided that notice is given six months before the expiration of the first period of three years.

8.—The Present Provisional Agreement shall in no way bind the Chinese Central Government in any future discussion between it and the foreign Governments with regard to the abolition of extraterritoriality. Extra-territoriality.

9.—The date on which rendition of the Mixed Court shall take place under the above Provisional Agreement shall be fixed by an exchange of notes to take place between the representative of the Kiangsu Provincial Government and the Senior Consul.

Pursuant to the provision of Art. 6 of the Agreement a joint commission was appointed to determine financial affairs and administrative work of the Court. This Commission consisted of Foreign Delegates—Mr. F. E. H. Groenman, Netherlands' Consul-General, Mr. A. D. Blackburn, H.B.M.'s Vice-Consul, and Mr. N. F. Allman, Mexican Consul; and Chinese Delegates—Mr. Hsu Yuan Commissioner for Foreign Affairs, Mr. Y. S. Ziar, M.A., and Dr. D. S. Chen. But from the very outset it appeared that the work of the Commission could not be confined to the limits stated in the Provisional Agreement. The Commission had to fill the gaps in the existing provisions, and define clearly the mutual relations between the future Court and the foreign administration in the Settlement.

The work of this Commission was embodied in a series of notes, which were exchanged between the Consular Body and the Chinese local authorities represented by Dr. V. K. Ting and Mr. Hsu Yuan.



According to these notes the arrangement reached between the parties presents as follows :

Chinese Title of the Court.

Validity of Mixed Court Judgments, and Appeals.

Competence of the Court.

Jurisdiction.

Conformity with Treaties.

Application of Municipal Bye-laws.

Assessor of a third nation to sit at the trial of cases of foreigners without extra territorial rights.

Suspension for one year of the application of Chinese Rule with regard to appeals.

Appointment of Judges.

Reference of Judgments for approval to the Kiangsu Provisional Government.

1.—The Chinese translation of the term "Court" after rendition shall be "Fa Yuan" (法院) instead of "Fa T'ing" (法庭).

2.—The establishment of the Shanghai Provisional Court provided for in Article I (i) in no way affects the validity of the judgments rendered in the past by the Mixed Court. These judgments are recognised as valid and final in all cases except in those civil cases in which

(a) the right of Appeal has been reserved and judgment has remained unexecuted.

(b) judgment has been given in default and has remained unexecuted.

In both these classes of cases an Appeal or retrial under the procedure of the Provisional Court shall be allowed.

3.—The Kiangsu Provincial Government shall place the judgments of the Mixed Court up to the date of rendition, and the judgments of the Provisional Court from the date of rendition on exactly the same footing in respect of validity as the judgments of all other Chinese Courts functioning within the said province.

4.—The competence of the Court as described in Article I (i) includes also

(a) Mixed criminal cases arising on foreign vessels within Harbour limits.

(b) Mixed criminal cases arising on foreign property including Municipal roads outside the limits of the Settlement, but within the districts of Shanghai and Paoshan, provided always that this understanding shall not operate to preclude further negotiations regarding the status of such roads.

(c) Mixed Civil cases arising in the surrounding areas within the districts of Shanghai and Paoshan.

5.—The respective jurisdictions of the Mixed Courts of the French and International Settlements remain as defined in the Provisional Agreement of June 28th, 1902.\*

6.—The words "without delay" in the last sentence of Article I (iv) shall be interpreted as meaning conformity with the provisions of the treaties.

7.—Bye-laws of the International Settlement mentioned in Article I (iii) and (vi) include all Bye-laws in force at the date of rendition, and all future Bye-laws will as a matter of course be communicated to the Chinese Authorities for information of the Provisional Court.

8.—In criminal cases where the citizen of a nation without extra-territorial rights is accused and the citizen of a nation with those rights is a complainant, the case shall be tried in the Provisional Court and a Consular Official belonging to a third nation shall be asked by the Court to attend the trial in order to watch the proceedings (Art. I (v) of the Provisional Agreement).

9.—In order to conform as closely as possible with judicial practice in other Chinese Courts the provision that "no appeal shall be allowed in cases in which the penalty is below the maximum imprisonment of the 5th degree" contained in Article I (vi) shall as an experiment not be enforced during the first years after the rendition of the Mixed Court, at the end of which period the Provisional Court shall be empowered to decide whether it is desirable to enforce the provision in question.

10.—The names of the President and Judges of the Provisional Court and Court of Appeal shall as a matter of course be communicated on appointment to the Senior Consul (Art. I (vii) of the Provisional Agreement).

11.—The provision in Article II that in cases involving imprisonment for 10 years or more the Provisional Court shall report the same to the Kiangsu Provincial Government for approval, shall not be enforced during the first year after the rendition of the Mixed Court, at the end of which period the Provincial Government shall decide whether it is desirable to enforce the provision in question.

\*See "Shanghai, Its Mixed Court and Council"—1842-1924, p. 113.

12.—Chinese Civil cases part heard or already on the Hearing List at the date of rendition shall be dealt with as follows :—

Part heard cases in the Mixed Court.

- (a) Cases in which foreign lawyers appear on the record as representing one or the other of the parties shall be placed on a Special Hearing List and the lawyers named on the record shall be permitted to appear in these cases in the Court of First Instance only for a period of twelve months from date of rendition, within which period all such cases shall be concluded. The Court may, however, exercise its discretion to extend this period when the circumstances in any case so warrant.
- (b) Cases in which no foreign lawyers appear on the record shall be dealt with in accordance with the ordinary procedure of the Provisional Court.

13.—Foreign lawyers shall be permitted to appear for either party in all cases in which a Consular Official sits with the Chinese Judge, both in First Instance and in Appeal, in addition to those cases in which temporary permission to appear has been accorded under the immediately preceding paragraph. It is further understood that foreign lawyers shall be permitted to appear for any party in all cases in which the Shanghai Municipal Council acts as prosecutor, and also in Civil cases in which a foreigner having extraterritorial rights is the plaintiff, and a foreigner without those rights is the defendant.

Foreign Lawyers.

14.—Should the Senior Consul wish to propose any modifications the Kiangsu Provincial Government will reciprocate by extending to these the same consideration (Art. VII of the Provisional Agreement).

Modifications.

Furthermore, defining the broad provisions of Section 3 of Art. 1 of the Provisional Agreement, the parties agreed as follows :

- (a) That cases coming within the following Sections of the Chinese Provisional Criminal "Code," the "Provisional Criminal Code Amendment Act," the "Law on offences relating to Morphine" and the "Special Law relating to "Bandits" shall be tried with a Senior Consul's Deputy sitting with the Judge in accordance with Section 3 of Article 1 of the Provisional Agreement.

Classification of Offenders.

*Chinese Provisional Criminal Code :*

Sections : 103 ; 164-167 ; 186-191 ; 198-202, so far as these sections relate to the crime of arson.

Sections : 203-205 ; 221-224 ; 266 ; 311, 313 (i) and (ii) ; 358 ; 368, 370-376.

Morphine Law Section 1 ; Bandit Law Section 4 (iii).

- (b) That cases coming within the following sections of the Chinese Provisional Criminal Code shall be tried either with or without a Senior Consul's Deputy as may be most convenient :—178-181.
- (c) That cases coming within the following sections of the Chinese Provisional Criminal Code shall be tried either with or without a Senior Consul's Deputy in accordance as the main crime is or would be tried with or without a Deputy :—315, 316 ; 328 ; 353 and 397 (the receiver of the stolen goods would be tried by the Court which would try the theft or robbery of such goods).
- (d) That an attempt to commit an offence shall be tried in all cases by the Court which would try the offence, if completed.
- (e) That all cases in which :  
the property of the Municipal Council is stolen damaged or destroyed, or  
an employe of the Municipal Council is accused in his official capacity  
shall be tried by the Judge of the Provisional Court and an official deputed by the Senior Consul in the same way as cases between Chinese and foreigners having extraterritorial rights.
- (f) That all cases in which the interest of the Municipal Council is affected in the manner set out in the following clauses shall be tried before the Judge of the Provisional Court with the Senior Consul's Deputy sitting with him to watch the proceedings in accordance with Section 3 of Article I of the Provisional Agreement :—

- (1) Where any bribe is offered to any Municipal officer under Articles 142 and 143.
- (2) Where any threat is employed or any violence or fraud committed against a Municipal Officer under Article 153.
- (3) Where any seal or ticket of attachment affixed by a Municipal officer is broken, etc., under Article 154.
- (4) Where any offence is committed in connection with Municipal elections under Articles 158-163.
- (5) Where the arrest or confinement is that by a Municipal officer under Articles 168-177.
- (6) Where a Municipal officer is impersonated, or any Municipal official dress or badge is worn without authority, under Article 226.
- (7) Where any Municipal document, map or plan is forged, uttered or delivered under Articles 238 and 240.
- (8) Where any false statement is made to a Municipal officer under Articles 240 and 241.
- (9) Where any Municipal seal or signature is forged, used without authority or uttered under Articles 246 and 248.

Mixed Court  
Rules of Pro-  
cedure.

As far as the Rules of Procedure to be applied by the Court were concerned, it was agreed upon such established rules of procedure as should be taken into account in accordance with Article I (ii) of the Provisional Agreement.

The present procedure of the Mixed Court is governed in its essentials by the "Rules of Procedure" as embodied in a printed booklet published by the Court, with certain amendments with regard to procedure in respect of security, rent cases and *ex parte* applications which have never been formally incorporated in the "Rules of Procedure."

The Commission agreed that it is advisable to make at the present time only such alterations in the rules and procedure of the Court as are absolutely necessary in consequence of the Provisional Agreement and that any general revision of the rules should be left to a later date when it will have become clearer in what direction adjustment is necessary.

The following are the immediate alterations which the Commission recommended in the present Rules of Court and which were approved by the Consular Body and the Chinese Authorities :

*Criminal Procedure :*

*Omit Article 5.*

15.—(a) All trials shall be held in open Court, except in the case of offences against morality when the presiding Judge may, in his discretion, exclude all persons other than those directly connected with the case.

26.—An appeal to the competent Court of Appeal shall lie from every final judgment and every interlocutory order made by the Court of First Instance, and shall be preferred by filing with the Chief Clerk a notice of appeal. Such notice shall set out generally the grounds on which the appeal is based and shall be filed within ten days after such judgment or order, or within such extended period as the Court of Appeal may appoint. On receipt of such notice the Chief Clerk shall forthwith place the case in the Hearing List of the Court of Appeal.

27.—The procedure relating to trials in Courts of First Instance applies, *mutatis mutandis*, to trials of appeals.

28.—The Court of Appeal may :—

- (a) dismiss the appeal ;
- (b) quash that part of the judgment of the Court of First Instance which is attacked and give a fresh judgment in respect thereof ;
- (c) order a new trial ; or
- (d) make any other order.



In addition to the Provisional Agreement for the Rendition of the Shanghai Mixed Court, published on September 27th and dated August 31st, 1926, and the contents of Notes and Memorandum of December 1926, given in the present Chapter, the "Municipal Gazette" published on February 18th, 1927, the following official correspondence regarding Personnel and Finances and the appointment of the President, Judges and the Chief Clerk of the new Shanghai Provisional Court:

Bureau for Foreign Affairs,  
Shanghai, November 27th, 1926.

Dear Mr. Aall,—I have the honour to inform you that, respecting the foreign staff in the Shanghai Provisional Court after its establishment, the verbal proposal suggested by your Committee on November 3rd, 1926, that ten foreigners, including the lady typist, should be employed by the Court in order to secure continuity, is acceptable to the Kiangsu Provincial Government.

With reference to the Court maintenance, I have the honour to inform you that the Kiangsu Provincial Government will place the sum of forty thousand taels to the credit of the Provisional Court before or on the day of the actual rendition of the Mixed Court. This sum shall be used to make up any deficit the Court may incur after all the income is exhausted. The said sum shall be maintained at the beginning of every fiscal quarter and should the whole fund or a part thereof be exhausted in any quarter, the deficit shall be immediately replaced at the beginning of the following quarter.

Furthermore, I may assure you that the President and Judges of the Provisional Court will enjoy such immunities and securities of tenure as provided for by law.

Hoping that the above will meet with your satisfaction.

Sincerely yours,

V. K. TING.

N. AALL, Esq.,  
Senior Consul,  
Norwegian Consulate-General, Shanghai.

Norwegian Consulate-General,  
Shanghai, December 24th, 1926.

Dear Dr. Ting,—I have the honour to acknowledge the receipt of your letter of the 27th ult. and note that our proposal that ten foreigners, including the lady typist, should be employed by the Shanghai Provisional Court in order to secure continuity, is acceptable to the Kiangsu Provincial Government.

The simplest method of giving effect to this proposal would appear to be that the Municipal Council should detach temporarily for service under the Kiangsu Provincial Government these ten members of its staff, that the Chinese should pay their salaries and house rent at rates not less than those they are entitled to, in their various ranks, in the municipal service and that the Council should continue to be responsible for the remainder of the privileges due to all municipal employees.

Should this suggestion commend itself to you I shall be happy to make the necessary arrangement with the Municipal Council.

With reference to the Court maintenance, in view of the intention of the Kiangsu Provincial Government to increase the staff of Judges and to add to the Court accommodation, I hope that you will see your way to arrange that the sum to be placed quarterly to the credit of the Provisional Court shall be not less than Tls. 40,000 as the amount

required will almost certainly prove to be in excess of this figure. I should also be glad if I might be informed whether the Provincial Government have decided to allocate any particular revenues for this purpose.

Yours sincerely,

N. AALL.

DR. V. K. TING,

Director of the Port of Woosung and Shanghai.

December 31st, 1926.

Dear Mr. Aall,—I have the honour to acknowledge the receipt of your letter of the 24th instant addressed to Dr. Ting, offering to make the necessary arrangement with the Municipal Council for the temporary detachment of ten members of its staff for service under the Kiangsu Provincial Government which should pay their salaries and house rent at rates not less than those they are entitled to, in their various ranks, in the Municipal Council, the Council continuing to be responsible for the remainder of the privileges due to all Municipal employees.

I shall be glad to have you make the necessary arrangement with the Municipal Council to this effect.

With reference to the Court maintenance, I have the honour to inform you that the Kiangsu Provincial Government will place the sum of not less than Sixty thousand dollars to the credit of the Provisional Court with the Bank of China before or on the day of the actual rendition of the Mixed Court. The sum shall be used to make up any deficit the Court may incur after all the income is exhausted. The said sum shall be maintained at the beginning of every fiscal quarter and should the whole fund or a part thereof be exhausted in any quarter, the deficit shall be immediately replaced at the beginning of the following quarter.

I am happy to be able to inform you that the land tax revenue from all foreign title deeds in Shanghai (estimated at Fifty thousand dollars per annum) has been appropriated for this purpose and other revenues will be added if necessary.

Hoping that the above will meet with your satisfaction.

Sincerely,

Hsu YUAN.

N. AALL, Esq.,

Senior Consul,

Norwegian Consulate-General, Shanghai.

January 6th, 1927.

Sir,—I have the honour to enclose herewith a copy of the Report presented to the Consular Body by the non-Chinese members of the Mixed Commission and I have the honour to request that I may be supplied, for purposes of record, with a copy of the Report presented by the Chinese members of the Commission to the Provincial Authorities.

With reference to the recommendation in the last paragraph of Part "B" of this Report, I am requested to inform you that the question of the payment of Court fees by their nationals is at present under consideration by the members of the Consular Body and no action can be taken on this recommendation until the matter has been fully considered.

I have, etc.,

N. AALL,

Consul-General for Norway and  
Senior Consul ad interim.

Monsieur Hsu YUAN,

Commissioner for Foreign Affairs and Representative of the Kiangsu Provincial Government, Shanghai.

Bureau for Foreign Affairs,  
Shanghai, January 7th, 1927.

Dear Mr. Aall,—I have the honour to acknowledge receipt of a copy of the Report presented to the Consular Body by the non-Chinese members of the Joint Commission and I have the honour to enclose herewith a copy of the report presented by the Chinese members of the same Commission to the Provincial Government.

With reference to the question of the payment of Court fees by the extraterritorial Treaty power nationals I have the honour to inform you that the Director of the Provisional Court has been requested to use his discretion in this matter.

I am,

Sincerely yours,

Hsu YUAN,

*Special Commissioner for Foreign Affairs for Kiangsu.*

N. AALL, Esq.,  
Consul-General for Norway and Senior Consul, Shanghai.

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December 31st, 1926.

Sir,—In accordance with Article VI of the Agreement of August 31st, last, I have the honour to confirm the recommendation which I have already made verbally, that Mr. J. E. Wheeler, the Registrar of the Mixed Court, be appointed Chief Clerk of the Provisional Court.

I have, etc.,

N. AALL,

*Consul-General for Norway and  
Senior Consul ad interim.*

Dr. V. K. TING,  
Special Representative of the Kiangsu Provincial Government,  
Shanghai.

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Bureau for Foreign Affairs,  
Shanghai, January 4th, 1927.

Sir,—In accordance with the Provisional Agreement regarding the Rendition of the International Mixed Court, in which it is provided that :

“The President and Judges of the Provisional Court as well as the Judges of the Court of Appeal shall be appointed by the Kiangsu Provincial Government.”

and in compliance with the terms of the Notes exchanged that :

“The names of the President and Judges of the Provisional Court and Court of Appeal shall as a matter of course be communicated on appointment to the Senior Consul ”

I have the honour to inform you that the Provincial Government in a telegram dated December 31st, 1926, has appointed :—

Mr. Hsu Wei-chen President and Messrs. Hu I-ku, Sung Yuan, Han Teu Chih, Wu Ting-chi, Hsieh Yung-sen, Ch'ou Yu, Hsiao P'ei-shen, Chen Wen-k'ai, Hsu Mou, and Wu Ch'ing-hsiung, Judges of the Provisional Court of the International Settlement of Shanghai and that Mr. Hsu recommended that Messrs. Sun Tiao-t'ing and Han Chung-shao, formerly Assistant Magistrates of the Mixed Court be appointed as Judges of the New Court.

I have, etc.,

Hsu YUAN,

*Commissioner for Foreign Affairs.*

N. AALL, Esq.,  
Senior Consul, Shanghai.



1897. Shanghai, January 21st, 1897.

Dear Mr. Aall,--I have the honor to acknowledge receipt of a copy of the report presented to the Consular Board by the Hon. Chinese members of the Joint Commission and I have the honor to enclose herewith a copy of the report presented by the Chinese members of the same Commission to the Provisional Government.

With reference to the question of the payment of Court fees by the extrajudicial Treaty power nations I have the honor to inform you that the Provisional Government has been requested to

use his discretion in this matter.

I am,

Respectfully,  
Special Commissioner for Foreign Affairs for Kwangtung

N. Aall, Esq.,  
Senior Consul, Shanghai.

Yours faithfully,  
Shanghai, January 21st, 1897.

I have the honor to acknowledge receipt of your letter of the 19th inst. in relation to the question of the payment of Court fees by the extrajudicial Treaty power nations.

I have the honor to inform you that the Provisional Government has been requested to use his discretion in this matter.

I am,

Respectfully,  
Special Commissioner for Foreign Affairs for Kwangtung

N. Aall, Esq.,  
Senior Consul, Shanghai.

Yours faithfully,  
Shanghai, January 21st, 1897.

I have the honor to acknowledge receipt of your letter of the 19th inst. in relation to the question of the payment of Court fees by the extrajudicial Treaty power nations.

I have the honor to inform you that the Provisional Government has been requested to use his discretion in this matter.

I am,

Respectfully,  
Special Commissioner for Foreign Affairs for Kwangtung

N. Aall, Esq.,  
Senior Consul, Shanghai.

Yours faithfully,  
Shanghai, January 21st, 1897.

I have the honor to acknowledge receipt of your letter of the 19th inst. in relation to the question of the payment of Court fees by the extrajudicial Treaty power nations.

I have the honor to inform you that the Provisional Government has been requested to use his discretion in this matter.

I am,

Respectfully,  
Special Commissioner for Foreign Affairs for Kwangtung

N. Aall, Esq.,  
Senior Consul, Shanghai.

*Civil Procedure :*

In place of Article 3 insert the following :—

3.—The plaintiff shall file with the Chief Clerk three copies of the petition in Chinese and a copy for each defendant in the case.

Where a Consular official sits with the Judge, the plaintiff shall, in addition, file three copies of translation in English of petition.

In place of Article 23 insert the following :—

23.—The defendant shall file with the Chief Clerk three copies of the answer in Chinese and a copy for each plaintiff in the case.

Where a Consular Officer sits with the Judges the defendant shall, in addition, file three copies of translation in English of the answer.

*Appeals.* 101.—An appeal to the competent Court of Appeal shall lie from every final judgment and every interlocutory order made by the Court of First Instance, and shall be preferred by filing with the Chief Clerk a notice of appeal. Such notice shall set forth the grounds on which the appeal is based and shall be filed within 20 days after the original decision was given, but afterwards by special leave of the Court Appeal.

102.—The procedure relating to trials in Courts of First Instance applies, *mutatis mutandis*, to trials of appeals.

103.—The Court of Appeal may :—

- (a) dismiss the appeal or cross-appeal or both ;
- (b) quash such part of the Judgment or order of the Court of First Instance as is attacked, and give fresh judgment in respect thereof ;
- (c) order a new trial ; or
- (d) make any other order.

The Commission further recommended that Court fees be paid in future by all parties irrespective of their nationality. (At present extraterritorial Treaty Power nationals pay no fees to the Mixed Court at all). Court Fees

The Commission was also invited to define what part of the duties in connection with the Court should be assigned to the Chief Clerk and foreign members of the staff. The Commission, however, expressed that for it to lay down that they shall have charge of certain departments and be excluded from others must do more harm than good.

If the Court is to work successfully on the new lines the most complete confidence between the Director and the Chief Clerk is essential. The Chief Clerk will be the servant of the Court and subordinate in all matters to the Director, and the Commission deprecated any arrangement which might make it appear, on the one hand, that he is not to have the full confidence of the Director, or, on the other, that in certain matters he is independent of the Director or has loyalties other than those of the Court. Chief Clerk.

It was, therefore, decided that it be left for the Director of the Court to define the actual duties and powers of the Chief Clerk and foreign members of the staff.

The Commission also made detailed study of the advisability of immediate introduction of Chinese Prison Regulations, viz : (1) " Rules governing the Administration of Prisons," December 1st, 1913, (2) " Provisional Regulations governing the release of Prisoners on Bail," and (3) " Rules relating to Control in Conditional Release," February 15th, 1923.

However in view of the fact that the Municipal Gaols are already administered on modern lines, it was not considered necessary to make any recommendations with regard to their operation. Any modifications in the present practice which may be found necessary Chinese Prison Regulations.

can be, in the opinion of the Commission, made later on the recommendation of the Visiting Committee provided in the Provisional Agreement.

Rendition of the  
Court, January,  
1st, 1927.

The latter suggestion practically completed the work of the Commission, and on January 1st, 1927, Mr. N. Aall, Norwegian Consul-General and Senior Consul *ad interim* handed over to Mr. Hsu-yuan, Commissioner for Foreign Affairs the official Seal of the Mixed Court.\*

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\*In connection with the rendition of the Mixed Court and the decided victory of the Kiangsu Provincial Authorities over the foreign diplomacy in this question, it is worth while to cite some passages from the Kuomintang manifesto, which enables us to form some idea regarding the future course of political events in connection with the operation of the newly-established Provincial Court and the mixed jurisdiction at Shanghai at large:

"The question of the rendition of the International Mixed Court in Shanghai to China was one of the causes of the May 30th movement in the year of 1925,"—states the manifesto, dated January 1st, 1927.—"Last year when the anti-northern expedition, conducted by the Kuomintang party, was crowned with success, the various foreign Powers began to realise that China was no longer to be insulted and agreed to make certain concessions. This has resulted in the opening of negotiations between Sun Chuan-fang, his subordinates, Dr. V. K. Ting, Director of the Woosung and Shanghai Commercial Area, Hsu Yuan, the local Commissioner for Foreign Affairs, and the Consular Body in Shanghai, as to the question of the rendition. Our aim is to secure for our country the control of the Court. However, the foreigners are still in possession of all the rights they had already acquired while in control of this Court.

This party has time after time mentioned this and expressed its opinion while the various public bodies in Shanghai have already voiced their protest. The regulations governing this Court were thus pigeon-holed and have never been put into force.

While the revolutionary force was on its way east, the foreigners suddenly handed over the Court to Marshal Sun Chuan-fang, whom all the people are opposing. The object of the foreigners in doing this is simply to have everything in connection with the Court definitely settled, thereby giving no ground to this party to demand that the Court should be handed over to China without any conditions."

These views were fully endorsed by another influential organization—the Chinese Residents' Association.—AUTHOR.



## CHAPTER XV.

### POLITICAL CASES IN THE MIXED COURT, 1925-1926.

The jurisdiction of the old Mixed Court, or, according to the <sup>General</sup> official Chinese title "The Official North of the Yang-king-pang," was strictly limited to specified cases which, briefly, could be defined as cases involving offences against "the peace and order of the Settlement."

In course of time this jurisdiction was gradually extended, but still it did not assume such proportions as to embody the right to try offences against the State. The control over the Court exercised by the Consular Body since 1911 gave the tribunal an international character which, coupled with the traditional neutrality of the Settlement, excluded any further possibility of the Court dealing with political matters.\* In cases of a mixed political and criminal nature the Court assumed jurisdiction in purely criminal matters, leaving the political aspects of the case to the consideration of the Consular Body, if extradition of the accused was sought by the Chinese Government, or ordering expulsion and deportation from the Settlement if extradition was not requested.

This measure was a direct result of the principle that "the right of asylum afforded to political refugees and the freedom of speech and press by all residents of the Settlement, should not be used for plotting against the lawful Chinese Government."

This principle has been strictly maintained by the foreign community since the Taiping rebellion in 1853.

The right of the Court to expel any undesirable Chinese or unrepresented foreigner was based on a proclamation† of the Taotai, dated February 24th, 1855, and issued in accordance with an agreement between him and the Treaty Power Consuls, the preamble reading as follows :—

"Whereas, no Chinese subject can acquire land, or rent or erect buildings within the Foreign Settlement without having first obtained an authority under official seal from the local authority, sanctioned by the Consuls of three Treaty Powers,‡ it has been decided that the following course shall be observed by any Chinese desiring to rent ground or houses within the said limits."

According to the stipulations of the proclamation, a Chinese had to apply through his landlord to the latter's Consul, provide as sureties two wealthy householders, and further enter into an undertaking that he would conform strictly to the Land Regulations, and contribute his share to any general assessments.

The rules laid down by the Taotai's proclamation superseded the provisions of Art. XIV of the first Land Regulations of 1845, which corresponded to the stipulations of the Treaties whereby

\*See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 249, 250.

†"North-China Herald," March 24th, 1855.

‡France, Great Britain and the United States of America.

"ground and houses of the foreigners shall be set apart by the local officers in communication with the Consul."\*

Between 1880-1885 these rules fell into disuse, except in cases concerning native ownership of land within the Settlement and the French Concession, but the foreign authorities have always assumed the right to deny the privilege of sojourn in the Settlement to any Chinese whose presence was recognized as dangerous or undesirable. The power of expulsion from the Settlement was exercised equally by the Consuls of the three Treaty Powers, America, France and Great Britain, the Consular Body and also the Municipal Council as the actual administrative authority of the International Settlement since 1863.†

The right of expulsion of undesirables from the Settlement has never been disputed by the Chinese Government and its local representatives. It has been recognized as corresponding to the Treaties and the earlier arrangements of the foreign consular representatives and local Chinese authorities. It was sanctioned by 70 years' practice, although the wording of the Taotai's proclamation left much to be desired in definiteness. Neither were expulsion and deportation of Chinese as punitive and preventive measures repugnant to the sense of the Chinese penal law in force until promulgation of the Provisional Criminal Code of the Chinese Republic‡.

In regard to unrepresented foreigners, the matter was more clearly defined.§ According to the agreement of Mr. G. E. Seward, Consul for the United States, and the imperially-appointed Intendant Hwang, dated June 25, 1863, and the communication of the same Chinese official, dated December 1, 1863, the Municipal Council was vested with power to deal directly with all foreigners not having a Consul at Shanghai.

However, since the control of the Mixed Court passed over to the Consular Body, neither the latter nor the Municipal Council exercised directly their traditional privilege except in cases of particular political importance.||

Cases in which expulsion or deportation was sought have been referred to the Mixed Court, to whom the necessary powers were fully delegated by the Consular Body and Municipal Council. The latter, represented by the police, had to apply to the Court as an ordinary party to the action.

We may cite the application of the Shanghai Municipal Police for expulsion of Emmerick Gradinger, *alias* Charles Etti, *alias* Baron de Gay, before Messrs. Tsang and A. J. Martin, Senior British Assessor, on January 14th, 1924. No specific charge was preferred against the accused. The police stated only that the defendant, an unrecognized foreigner, was deported from the French Concession as an undesirable. The Court granted the application and ordered the defendant to be expelled from the Settlement.

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\*Supplementary Treaty of Great Britain and China, October 8th, 1843; the Treaty of China and America, Shanghai, July 9th, 1844; and China and France, September 24th, 1844.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 28, 29.

‡March 10th, 1912.

§See: "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 47, 48.

||See *ibid* pp. 28, 29, 241, 242.

In 1925, such applications were invariably made in all cases in which the foreign administration thought that the particular person or persons were "undesirables and a menace to the peace and good order of the Settlement."

The political and social disturbances in the country and the revival of the anti-foreign propaganda under the influence of the Communist Third International and Chinese extremists, placed the foreign administration in a very difficult position with regard to the preservation of peace and order in the Settlement.

It was obvious that in order to prevent grave disturbances the Settlement authorities had to take some preventive measures. It was also obvious that in view of the traditional political neutrality of the Settlement and freedom of speech and press adopted also as guiding principles by the Mixed Court under the Consular Body, there has been no other remedy than to resort to the privilege of expelling all persons endangering the peace and order in the Settlement.

Case of Zau Lih-tsz.

The first case of that kind occurred on January 23rd, 1925, when Zau Lih-tsz, Vice-president of the Shanghai University, was charged before Messrs. Kuan and A. J. Martin, Senior British Assessor, as an undesirable and a menace to the peace and order of the Settlement. The defendant, in his official capacity, was charged with keeping on the premises of the institution, a large stock of books and pamphlets in Chinese and English relating to communist teachings.

The literature was liable to confiscation according to Art. 13 of the Law of Publication, 1914, as contrary to the provision of Art. 11 and 12 of the same Law.

"There is no doubt that the University is the home of Bolshevism, which is undeniably hostile to the present Government in China," stated Mr. E. T. Maitland, prosecuting solicitor of the Municipal Council in summing up the case for the prosecution. "The country at present is disturbed by many factions fighting and it is not desirable that these people create further trouble with their Bolshevik books. The Settlement is set aside by the Chinese for foreigners, and on no account do foreigners wish Chinese to shelter in the Settlement and distribute propaganda tending to produce more strife. If the accused chooses to be vice-president of the university let him do so in Chinese territory where he will be under his own authorities."

Counsel for the accused based his defence on the fact that the Communist doctrine was not declared illegal in China and that the books and pamphlets found formed a part of the library of the University and were only for the use of students studying sociology. The Chinese Law of Publication of the 3rd year of the Republic (1914), promulgated by the late President Yuan Shih-kai, was never before Parliament and therefore lacked the necessary legal authority. In reference to the personal liability of the accused, the defence pointed to the fact that he, as vice-president, was not personally responsible for the keeping of any literature in the premises of the university and for the political sympathies and scientific researches of the students.

The Court, however, after due consideration and examining the books and pamphlets produced by the prosecution as evidence, found the accused responsible for the course adopted by the



university and personally dangerous to the order and peace of the Settlement. The Law of Publication of the 3rd year of the Chinese Republic was not officially repealed and thus was still in force,\* but in view of the fact that the accused had been a *bona fide* resident of the Settlement for more than 20 years the Court allowed him to remain in the Settlement under a personal bond of \$1,000. The books and pamphlets were confiscated.

Analyzing the decision of the Court, we must draw attention to the fact that the Court allowed the accused to reside in the Settlement under a personal bond and security only on the ground that he had been a *bona fide* resident of the Settlement for more than 20 years. In taking this stand the precedents of the Court were followed in making a definite discrimination between a *bona fide* and an occasional resident.†

In the cases of Wu Kung-fu *et al* and Ho Shih-kioen, charged before Messrs. Kuan and A. J. Martin, Senior British Assessor, on September 25, 1925, and October 26, 1925, with being undesirables and a menace to the peace and good order of the Settlement, the Court assumed a different attitude.

Both of the accused were arrested on board a Dutch ship on a warrant issued by the Court and countersigned by the Netherlands Consul-General. They came to Shanghai after having been deported from Batavia for publishing inflammatory articles in a Chinese newspaper. After considering the incriminating articles and finding them "blood-thirsty" the Court came to the conclusion that since the accused were not *bona fide* residents of the Settlement there were liable to expulsion.

The Dosser Case,  
1925.

The right of the Court to expel undesirables, as well as the illegality of communist teachings from the point of view of Chinese law, was very seriously challenged in the famous case of Z. Dosser, which came before the Court composed of Messrs. Zau and C. E. Whitmore, British Assessor, on June 29, 30, July 3, 6, 7 and 17, 1925, and which aroused widespread interest.

On June 29, 1925, Comrade Z. N. Dosser, a citizen of the Union of Soviet Socialistic Republics, member of the Russian Communist party and representative of the Soviet Oil Trust, and his wife, Mrs. E. M. Dosser, *alias* Philipoff, were arrested by the Municipal police on a warrant issued by the Mixed Court and countersigned by the Senior British Assessor on behalf of the Senior Consul and British Consul-General.‡ The accused were arrested on board the steamer *Mantua* after having been expelled

\*The Law of Publication of the 3rd year of the Republic has now been repealed by Presidential Mandate of January 29th, 1926.—Chinese Government Gazette, Peking, January 30th, 1926.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 240, 241.

‡The procedure in the issuance of criminal warrants applied in this case was the same as usual. The warrant was countersigned by the British Assessor acting on behalf of the Senior Consul and on behalf of the British Consul-General as the Police had to effect the arrest on premises in possession of British nationals, in this case a British ship. As a result of the objection raised by the defence with regard to the irregularity of such procedure, the British authorities deemed it necessary to amend the regulations to the effect that if it is desired to execute foreign or Mixed Court warrants for search or arrest on British ships or premises in Shanghai, application for countersignature must always be made to the Registrar of H.M.'s Supreme Court for China and not to a British Consular Officer or Mixed Court Assessor, besides the Senior Consul's and other Consular countersignatures as required hitherto.—Police Order No. 13, 3565, dated July 29th, 1925.

from Hongkong as undesirables, while *en route* to Canton. There was found in Comrade Dosser's possession an attaché case with official documents and reports in Russian containing a description of the events of May 30th, 1925, at Shanghai, in which the latter were extremely exaggerated with the apparent intention of creating anti-foreign feeling amongst their readers.

Comrade and Mrs. Dosser were charged with "being in possession at Shanghai of literature liable to cause persons to commit a breach of the peace, contrary to Art. 221 of the Chinese Provisional Criminal Code, and with being undesirables and a menace to the peace and order of the Settlement." The accused appeared on June 29th before Messrs. Zau and C. E. Whitamore, British Assessor. The prosecution, represented by Mr. E. T. Maitland, Prosecuting Solicitor of the Municipal Council, asked for a remand of the case for further investigation and that both accused be detained in custody in view of the state of emergency proclaimed in the Settlement. The Court, however, disagreed with the prosecution and, contending that the state of emergency was a practical state, not a legal state, and that the case appeared to contain a political element the Court always tried to keep out of cases, allowed the first accused to be released on a bail of \$20,000 and the second accused (Dosser's wife) on signing a personal bond.

On June 30th, 1925, the prosecution made an application for cancellation of bail and leave to bring an additional charge for that the accused "did between the 1st and 29th day of June, 1925, at Shanghai, attempt and make preparations to commit a hostile act against certain foreign states, contrary to Art. 127, 129 and 130." A further search of accused's luggage revealed a hidden document in Russian, stating that the first accused was delegated by the Agitation Department of the South Section of the Communist Party in China to go to Hongkong and Canton for the organization of strike committees.\* The Court granted the application in spite of the protests of the defence, represented by Dr. O. Fischer.

The points raised by the defence in the course of subsequent sessions of the Court involved very important principles challenging the right of the Court to expel undesirables on the application of the Municipal police. It gave quite a new aspect to political matters coming under the judicial cognizance of the Mixed Court in connexion with the events of May 30th, 1925.†

It was practically the first time in the history of the Mixed Court that it had to face in full the problem of its jurisdiction in cases relating to political cases and to define it in connexion with the general policy of the Chinese Government.

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\*The full text of the document was as follows:—"Certificate No. 43. The bearer of this, Comrade Z. N. Dosser, Communist Party ticket No. 493, is sent by the Agitation Department of the South Section of China to Hongkong and Canton for the organization of strike committees. All members of the Russian Communist Party are to give him every assistance in his work. This is certified by the seal of the Agitation Department. June 16th, 1925. Shanghai, Agitation Department R.C.P."

†We pass the objections raised by the defence in respect to Mixed Court jurisdiction over citizens of the U.S.S.R. referring the reader to pp. 234, 235 of "Shanghai: Its Mixed Court and Council," as the objection in Dosser's case was similar to that in all cases affecting the Soviet citizens and institutions in China.—  
AUTHOR.

The contention of the defence with regard to the first question was that the application for the expulsion of the accused was contrary to the provisions of the Criminal Law of the Republic of China, which does not contain such a specification of an offence as "undesirable," and that Art. 10 of this law laid down with all explicitness that "no act constitutes an offence, unless the same is specifically made so by law."

And further, that there could be no precedent in a criminal case as in a civil action, and that the Court's authority based on traditional practice in view of the above provision of law lost its foundation.

In regard to the charge preferred against the accused under Art. 221, the defence advanced the argument that the mere possession of seditious literature which might incite people to commit an offence—in the present case a strike prohibited by Chinese law\*—did not constitute an offence as specified in Art. 221. Moreover, that the strike itself did not constitute an offence as it was carried out officially with the moral and financial support of the Chinese Government.

Likewise it was contended that Art. 127, 129 and 130 of the Criminal Code could not be applied in the case as no particular state was specified in the charge, and no "hostile act" against any state was committed.

In fact, according to this argument, it appeared that the police tried to prosecute the accused under Chinese law, which held the actions of the accused neither unlawful nor contrary to the interests of the State or public morals. The communistic propaganda in China was directed only against the foreigners; it associated itself with the Chinese national movement and thus became legalized in the eyes of the Chinese Government and nation. It was obvious that under the circumstances the Court, as a Chinese Court administering Chinese law and customs, could not pass a sentence against the accused.

The position became more complicated after the text of the official translation of the Criminal Code, made by the Commission on Extraterritoriality at Peking and used by the prosecution, was compared with the original Chinese text. It was disclosed that the translation was incorrect. The wording in the translation "Hostile act against any foreign state" should have been "Whoever, without authority, opens war against any foreign state," or literally—"Whoever privately opens war."

After going into the question raised by Dr. O. Fischer the Court agreed with his contention in respect to Art. 127, 129 and 130, but considered that the right of the Court to expel undesirables on application of the Municipal Police at its own discretion was indisputable by virtue of the existing custom, and, further, that in view of the Supreme Court decision No. 75, character "*Toon*," of the 2nd year of the Republic, widening the scope of Art. 221, the possession of an instrument enabling the accused to commit an offence made him liable under this article. The case against the second accused was dismissed.

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\*Art. 224 of the Provisional Criminal Code of the Republic of China.



However, in its final decision the Court came to the conclusion that, though the certificate of the Agitation Department of the Russian Communist party in possession of the accused was proved to be a genuine one, the mere possession of it was not an offence punishable under any provision of the Criminal Code. As far as the accused's further sojourn in the Settlement was concerned, the Court ruled that he was an extremely undesirable resident. According to this decision the accused was sentenced to expulsion\* and handed over to the local Chinese authorities with the request that he be deported.†

This attitude was invariably assumed by the Court in a number of cases, in which the native press was prosecuted for publishing extremist articles tending to cause a breach of the peace and good order in the Settlement by arousing hatred of the foreigners amongst the Chinese masses. It was a very elaborate system of propagation of anti-foreignism undertaken by certain Chinese political factions.

The position of the prosecution and the Court was the more aggravated in that the law of the Chinese Republic governing newspapers, promulgated on the 2nd day of the 4th moon of the 3rd year of the Republic (corresponding to April 2nd, 1914, of the Western calendar), was cancelled by the Mandate of President Li Yuan-hung on July 16th, 1916. The only remaining law under which the charges could be preferred was the Law of Publication, of December 4th, 1914, and the respective provisions of Sections IV and XVI of the Chinese Provisional Criminal Code relating to offences against friendly relations with foreign states and public order. The Court, however, in a number of cases, including the above-cited case of Z. Dosser, refused to consider charges under these sections.‡

The authority of the Chinese Publication Law was also disputed. The application of this law has fallen into disuse since the death of President Yuan Shih-kai, who promulgated it during his short reign as Emperor of China. The subsequent legislation of the Chinese Parliament and mandates of President Li Yuan-hung

\*Magistrate Zau in the Chinese version of the decision added the following passage: "In examining into the contents of the Delegation Certificate the Court finds that the accused, having the qualification of a member of the Communist Party, has his duty to specially carry on agitation and also the members of the same party should assist him. By this it can be seen that the accused, by establishing at Shanghai an oil office, takes advantage of this position to carry on propagandist work, contrary to Art. 6 of the arrangement made between the Republic of China and the Union of Soviet Socialist Republics. This has a great bearing upon the peace and order of society at large."

†The case of Z. Dosser resulted in two similar charges preferred against Dr. E. Fortunatoff, Physician of the Consulate-General of the Union of Soviet Socialist Republics, and A. Gregorenko, Rumanian citizen, "for that they on the 11th and 13th of July, 1925, at Shanghai did offer and agree to deliver a bribe of \$10,000 to a public officer, one plain-clothes constable named Kedrolivansky, relating to an official duty performed by the said constable, and instigating him to sign a false statement to the Mixed Court that the certificate of the Agitation Department, which figured in Dosser's case, was a forgery." The charge was framed under Art. 30, 142, 143 and 178 of the Chinese Provisional Criminal Code. Both cases came up for hearing before Messrs. Zau and C. E. Whitmore, British Assessor, on July 20th, 1925. The first accused, Dr. E. Fortunatoff, failed to appear at the trial. It was later found out that he absconded from Shanghai to Peking, where he stayed with the U.S.S.R. Embassy. The Court ordered the confiscation of his bail, \$10,000, and issued a warrant for his arrest. The second accused appeared in Court, and was acquitted, as not having taking an active part in the bribery of the police officer.—AUTHOR.

‡Case of Zau Lih-tsz before Messrs. Loh and A. J. Martin, Senior British Assessor, December 19th, 1924.

entirely destroyed its authority, though it remained officially unrepealed until January 29th, 1926, when the Ministry of Justice announced its cancellation. The provisions of this law were couched in very indefinite terms with regard to newspapers, its primary object being the regulation concerning other publications.

In the absence of any other authority the Court had still to accept it as binding in all cases where newspapers were charged with publishing seditious articles tending to cause a breach of the peace and order in the Settlement. The requirements of Art. 3 (clauses 2 and 3) of this law with regard to the publication of the name and address of the publisher, the date of the publication, and the name and address of the printer, corresponded to the traditional practice of the Court, which in case of an application made by the Police to direct the publishing of these particulars invariably assented to it.\*

The Law of Publication, 1914.

The law of Publication was applied for the first time in the well-known case of Shanghai Municipal Police *vs.* Zau Li-tsz, Zung Pao-lai and Sung Jui-yoen, in which the above-named persons, editors of the Chinese newspapers "Ming-Kuo-Pao," "Shanghai Journal of Commerce" and "Chun-Hua-Hsin-Pao" published in the Settlement, were charged under Art. 3 and 11 of the same law, "for that they being the editors of certain newspapers did, on February 20th, 1925, fail to publish in their papers the name and place of birth of the editor, name and address of the publisher, and the name and address of the printer and of the printing establishment where those newspapers were printed" (Art. 3). And further, "for that they being editors of certain newspapers did on February 20th, 1925, cause to be printed and published in the said newspapers matters tending to cause a breach of the peace and order" (Art. 11).

The last two charges were brought only against the editors of the "Shanghai Journal of Commerce" and "Chun-Hua-Hsin-Pao," while against the first accused Zau Lih-tsz an additional charge of being "undesirable and a menace to the peace and order of the Settlement" was preferred.

The article with which the two accused was incriminated was an appeal to the workers in the Japanese mills in Shanghai to rise up and to oppose the "Japanese capitalists," who "treated the Chinese as slaves" and "as their own cows and horses." The opening of Japanese mills in China, was, according to this appeal "an encroachment upon China's sovereign rights."

Case of "Ming Kuo-pao," 1925.

The police investigation and search in the premises of the "Ming-Kuo-Pao" disclosed the existence of a connexion between the newspaper and the Shanghai University, where previously a number of communist books, pamphlets and documents were seized by the police.

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\*Case of Woo Veh-doo, before Messrs. Loh and A. J. Martin, Senior British Assessor, November 28th, 1924. In this case the Court instructed the police to notify all Chinese newspapers regarding the necessity of publication of the name and address of the editor, as it was laid down in Art. 8 of the law governing newspapers.—AUTHOR.

Case of Tseng Kuo-jul *et al* before the same Court, September 11th, 1925. The accused were fined for not complying with requirements of Art. 3 of the Law of Publication.

The same search revealed also entries in the books of the "Ming-Kuo-Pao" showing receipts of various sums without indication of their sources.

The defendants' counsel, Mr. A. Covey, stated that the name, address and place of birth of the editor had never been published in any newspaper in China, as the Law of Publication had never been in actual force. The publishers and editors at Peking and Kiangse had filed a petition with the Government to have the law officially repealed. The article in question published by the newspapers was forwarded to them by the workers themselves. It was chopped by one of their representatives and the expressions pointed out by the prosecution in English had another more moderate meaning in Chinese. The "Ming-Kuo-Pao" had no connexion with the Shanghai University, or the Government of the Union of Soviet Socialist Republics. The money was received by the newspaper from the headquarters of the Kuomintang at Canton and Peking. The party also subsidized the Shanghai University.

The Court, composed of Messrs. Loh and A. Tajima, Japanese Assessor, upheld the former decision of Messrs. Kuan and A. J. Martin that the Law of Publication was still in force\* and should be applied to the newspapers by virtue of Instruction No. 614, character *Tung* issued in the 4th moon of the 6th year of the Republic at Peking, and the interpretation of this instruction by the Supreme Court which held "Newspapers are classed as publications. Although the Press Law has been repealed, Publication Laws continue to be effective. If, therefore, newspapers publish matters prohibited in the Publication Laws, the persons responsible for their publication should be dealt with according to Art. 14 to 16 of the Publication Laws in view of the fact that the latter are the special laws of the Criminal Code whilst the Press Laws, similarly, are a special enactment to the Publication Laws. The only difference between these laws is that the term 'editor,' in the Press Laws is designated in the Publication Laws as 'author.' Both these terms, however, denote the writer of the publication."

Newspapers  
Publications. as

As far as the article in question was concerned the Court found that it was intended to stir up Chinese minds against foreigners, and the accused, as responsible for its publication, were fined.

Following this decision, Counsel, acting on behalf of the editors of the "Shanghai Journal of Commerce" and "Chung-Hua-Hsin-Pao" filed on April 8th, 1925, an application for an order that Art. 3 (clauses 1, 2 and 3) of the Law of Publication of the Republic of China be suspended and remain in abeyance until such time as the Central Government rules either that the said Art. 3 (clauses 1, 2 and 3) be repealed, suspended or shall still remain in force and effect.

\*On January 10th, 1925, in reply to the previous inquiries of the Municipal Council's Prosecuting Solicitor the Secretariat of the Shanghai District Court, Sheng Pan-ting, intimated, as follows:—"In reply we beg to inform you that since the repeal of Press Laws, Publication Laws were promulgated and came into force on the 4th day of the 12th moon of the 3rd year of the Chinese Republic. Newspapers are included in the literature classes as publications. The editors, who are responsible if prohibited matters are published, should be dealt with according to Articles 14 to 16 of the Laws. The applications of these articles is fully explained in the Instructions No. 614 character *Tung* issued in the sixth year of the Republic by the Supreme Court."



The said application was filed on the ground that the Shanghai Publishers Union, Daily News Union and Book Dealers Union awaited the cancellation of the above article as a result of a petition dated April 5, 1925, sent by the associations to the Central Government at Peking.

The gist of the petition was that the Chinese Law of Publication was contrary to the spirit of the Chinese Constitution. The meaning or sense of the provisions of the Law of Publication were so classed that it led to misrepresentation by the Police authorities in different places, which was apt to hinder the freedom of the press.

The Court, composed of Messrs. Kuan and A. J. Martin, Senior British Assessor, denied the application, however, on the ground that the Mixed Court as a Chinese court must obey Chinese law. It had no authority to repeal or suspend law until it had been repealed or cancelled by the Government at Peking.

The petition of the unions, as already stated, resulted finally in the Law of Publication being repealed by the Chinese Government on January 29th, 1926, leaving a blank space in the legislation of the Republic concerning the press, except the penal provisions of Chapter XVI of the Criminal Code, which fail to give any specification of offences pertaining to the propagation of certain political and social doctrines constituting a specific menace to the peace and order of the foreign community in China.

The Cotton Mill  
Strikes.

The absence of any regulations concerning labour organizations and deprivation of the latter in China of the right to strike led to a series of offences under Art. 221-228 of the Criminal Code, which the Court had to deal with as a result of the anti-foreign movement in Shanghai.

Fifty-eight persons, including workers of the Nagai Wata Kaisha Co. mills and private persons, were brought before the Court on various dates in February and March 1925 on charges, which can roughly be divided in six groups: (1) "For that they (three persons) at various times and places did distribute certain pamphlets which contained articles prejudicial to the good order of the Settlement, contrary to Art. 221"; (2) "For that they (five persons) at various times and places by means of threats of violence, did attempt to prevent mill workers from continuing with their work, thereby interfering with the work of the Nagai Wata Kaisha Co., cotton mills contrary to Art. 223"; (3) "For that they (nine persons) concerned together with others between February 14th and 16th, 1925, at various times did at Shanghai act as ringleaders in a strike contrary to Art. 224"; (4) "For that they (22 persons) on February 15th, 1925 at 200 Jessfield Road, at a cotton mill there situate, did assemble together for the purpose of committing violence and being then and there assembled together were guilty of riotous behaviour, and further, that the same persons at the same time and place concerned together with others did maliciously damage certain property, to wit milling machinery, the property of the complainant cotton mill at N.200 Jessfield Road, contrary to Art. 405." Besides the said two charges a further charge for causing grievous bodily harm, contrary to Art. 316, was brought forward against 13 of the accused; (5) "For

that they (16 persons) on February 19th, 1925, at Ying Ziang Kong did assemble together and did violence after such assembly had been commanded by the police authorities to disperse, contrary to Art. 165," and (6) "For that they (three persons) concerned together with others at 5 p.m., on February 16th, 1925, at the Dah Kong cotton mill quarters, Ping-liang Road, did by means of threats, unlawfully prevent mill workers from attending to their legal employment, contrary to Art. 358 of the Chinese Provisional Criminal Code."

All the above stated charges were fully sustained by the evidence of the police and witnesses before Messrs. Loh and A. Tajima.

The complainants, the Nagai Wata Kaisha through its representatives, did not press the charge and asked for an adjournment of the case in view of the possible friendly settlement of the matter with the Workers Union. The Court refused to entertain this request, on the ground that the Workers Union was not a party to the action and that though the complainants were private persons, the case had a decidedly public character.\* On the other hand, the Court refused also to entertain the plea of jurisdiction on the part of the defence in the case of one named Tong Ts-woo. The accused was arrested in Chinese territory with the assistance of the Chinese police, but the plea was overruled on the grounds that the latter had transferred the case to the Mixed Court.†

Counsel for the defence objected also to some of the accused being charged under Art. 224 in view of the wording of the article which stated: "When workmen engaged in the same business combine, etc." The accused were not employees of the Nagai Wata Kaisha Co., but school teachers who could not commit an offence specified so in that article. The Court overruled this objection, agreeing with the contention of the prosecution that the term "ringleader" in Art. 224 did not necessarily imply that the "ringleader" of a strike must be a workman employed in the same business.

However, the Court did not show any inclination to follow the conception of the prosecution and to connect the strike with communist propaganda carried on by some native newspapers. In its final decision it conclusively showed that it regarded the whole issue as simply a case against "public order" without any political background. Fifty-two accused were fined in sums varying from \$5 to \$200, with the alternative of going to prison for periods ranging from five days to six months, in proportion to the sum of the fine, three accused were ordered to sign personal bonds for good behaviour, and four accused were dismissed.

The charges preferred against 49 persons, of whom 47 were students accused in rioting on Nanking Road on May 30th, 1925, were framed under Art. 164 and 165 of the Chinese Criminal Code and Art. 11 of the Law of Publication of December 4th, 1914 (4th day of the 12th moon of the 3rd year of the Republic)," for that they

Case of Rioting,  
May 30th, 1925.

\*Proceedings, February 21st, 1925.

†Proceedings, March 10th, 1926.

did on May 30th, 1925, knowingly continue in an assembly of persons who had come together with intent to commit violence after such assembly had been commanded by the competent authorities to disperse" (Art. 164 and 165), and "for that they were on May 30th, 1925, concerned together with others not in custody in publishing written documents tending to cause a breach of the peace and good order" (Art. 11.)

In outlining the case for the prosecution Mr. E. T. Maitland, Prosecuting Solicitor, stated that he would produce conclusive evidence showing that the real cause of the riot was the communist propaganda which flourished within the walls of the Shanghai University.

The defence was represented by Mr. Ho Fei, a Chinese lawyer and Dr. Mei, an American legal practitioner. Dr. O. Fischer watched the case on behalf of the Chinese Government.

Messrs. Kuan and J. E. Jacobs, Senior American Assessor, before whom the case was brought up for hearing on June 9th, 1925, stated at the outset of the case that although the Court intended to go into the smallest details of the case, it was not a Court of inquiry, either to comment upon or criticise the action taken by the police. They were merely trying the defendants on the charges lodged against them.

In view of this remark Dr. O. Fischer drew the attention of the Court to the Consular Body's letter, dated June 6th, 1925, addressed to the Commissioner for Foreign Affairs, in reply to his note regarding the action of the Police on May 30th, 1925. In this letter Commander G. d'Rossi, Italian Consul-General and Senior Consul, stated on behalf of his colleagues :—

"From the above it will be observed that the action of the police has been very different from that described in your notes under reply. None can regret more deeply than the Settlement authorities, the loss of life which has occurred, but the question of the propriety of the action by the police is one which should be raised in the course of the legal proceedings, when the prisoners arrested on this occasion are brought for trial."

But the Court maintained that the matter which Dr. O. Fischer wished to take up was one which should be taken up with the Consular Body, as the following sentence of the same letter stated further that "there will also, as a matter of course, be an investigation by the authorities concerned into the action of the police officer in question, besides which, the competent Courts stand ready to deal with any complaint."

The further facts of the case are well known. The evidence for the prosecution stated that the accused, mostly students of the Shanghai University, some of whom were identified as ringleaders of a crowd of Chinese shouting—"Kill the foreigners," "Down the foreigners," which, in spite of demands and resistance on the part of the police, attempted to force its way into the compound of the Louza Police Station on May 30th, 1925, and release the arrested students.

The police, acting under general instructions regarding the use of arms as a last resort in case of rioting, fired at the crowd and killed several and wounded others.



The statement of the police was corroborated by the evidence of private witnesses, and with regard to the location of the wounds, by native and foreign medical practitioners who attended them.

In the course of the proceedings the prosecution, as previously stated, tried to establish connexion between the present riot and communist propaganda carried on for some time by the students and professors of the Shanghai University.

On June 3rd, 1925, the police acting on a warrant issued by and signed by Colonel W. F. L. Gordon, Commandant of the Defence Forces at Shanghai, searched the premises of the Shanghai University and ejected the students as the premises were required for the stationing of a detachment of the United States Navy forming a part of the Defence Forces. On searching the premises the Police found a number of documents, letters and pamphlets calling upon the native workers of the Shanghai Municipal Council and the native police to strike against the foreigners. The letters and documents related to a correspondence concerning the establishment and function of the communist party in China. The prosecution expressed its desire to produce them as evidence of the motive at the back of all the trouble in view of the fact that the names mentioned in the correspondence were the same as those of some of the prisoners before the Court.

The defence objected to the introduction of this evidence on the ground that it had no direct bearing upon the issue before the Court and this contention was sustained.

"The Court contends that the Police are making a mistake in bringing all this in," said Mr. J. E. Jacobs. "The Court cannot get beyond the fact that the Chinese Government has recognized the Bolshevik government, and I do not know any law, nor does the Magistrate, which goes against the teachings of Bolshevism. The Police are injecting a very serious problem into the case, and I do not think it is called for. The Court does not see any point in allowing these letters to go in. The Court will take judicial knowledge of the fact that the school had been before the Court previously on a charge of distributing seditious literature, but there is no use of going any further than that."

However, at the further proceedings the Court intimated that if the Police still wished to put in communist literature found in the Shanghai University, it would be accepted by the Court, although strictly speaking, it had no bearing on the trial of the accused before the Court, but that it would not be passed upon by the Court. Thus, the political element in the issue was again eliminated and the case was tried as a case against the peace and order of the Settlement.

The contention of the defence was that the movement was not directed against the foreigners—it was a patriotic movement and not Bolshevik in origin. The students held a peaceful demonstration, wishing to call the attention of the public at large to the hard position of the workmen in the Japanese mills where a worker had been killed. They were not armed and did not shout "Kill the foreigner" or "Down the foreigners;" they did not disperse because some of their comrades were taken by the police into custody. They thought, perhaps wrongly, that it would have been an act against comradeship to walk away and to leave them

alone to suffer. They also did not disperse after the police had warned them that they would shoot simply because they could not hear the voice of the officer in command, and because the throng was too dense. They were not intending to rush the station and in proof of their statement contend that some of them were shot from behind.

These statements were corroborated by the evidence of the accused and several foreign witnesses. The students on trial denied any knowledge of the existence of "Bolshevism." They declared flatly that they did not understand what "Bolshevism" or "Communism" meant.

In summing up the case for the defence, Dr. Mei stated that the prosecution had failed to prove the charges against the students, whose sole motive in holding the demonstration was to protest against the injustice done to one of their countrymen killed by the Japanese during the strike at the Nagai Wata Kaisha Cotton Mills. It was a movement inspired by the highest feelings of justice in the face of treaties, the insult of which was felt so bitterly by the whole Chinese nation.

The prosecution in its conclusive statement to the Court asked that the accused be expelled from the Settlement as their Communist activities and propaganda of anti-foreignism were a menace to the peace and order of the Settlement.

The Court decided as follows :

"As the Court has already stated, it is not passing judgment on the police in this case, nor will it comment on the problem mentioned by Dr. Mei in his argument.

"The question before the Court is the charge upon which the accused have been brought here. On this point, the Court finds that on May 30th, a number of Chinese students among whom were some of the accused, began a campaign of speech-making and distribution of pamphlets in the vicinity of Louza Station, which the police made efforts to stop, this campaign being directed as a protest against the death of a Chinese workman killed in a Japanese mill. These students were mere boys and youths, who the Court believes had no intention, at the beginning, to create a riot. Of those before the Court who are not students, the Court believes they were attracted to the crowd either by curiosity or accident.

"In view of these facts, therefore, the Court only requires the defendants to sign a personal bond to keep the peace in future."\*

Charges of Rioting,  
June 1st,  
1925.

The case of rioting on June 1st, 1925, was made the subject of a separate trial before Messrs. Kuan and J. E. Jacobs, Senior American Assessor, on June 12th, 1925. Seven persons, none of them students, were charged under Art. 164 and 165 of the Chinese Provisional Criminal Code and Art. 11 of the Law of Publication. A further charge was preferred against them under Art. 313, "for that they were concerned together with others not in custody on June 1st, 1925, in attempting to injure certain persons by hurling bricks and stones at them." Besides these charges three of the accused were charged under Art. 406, "for that they on the same date did wilfully damage a motor car, the property of another."

The prosecution produced evidence to the effect that the accused were ringleaders of a crowd of Chinese which wilfully

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\*Full judgment of the Court reads as follows " Bail forfeited of those who failed to appear. Others required to sign bond to keep the peace in future."

obstructed traffic in Nanking Road on June 1st, 1925, and committed violence by throwing bricks and stones at the police after they had been commanded to disperse. Several firemen, who used a hose in assisting to disperse the crowd, were injured. The police were compelled to fire at the crowd. All of the accused were identified as having distributed inflammatory pamphlets.

The defence was based on a general denial of the facts brought forward by the prosecution, but Dr. O. Fischer raised a very important question as to the application of Art. 11 of the Law of Publication in case of a charge of distributing seditious literature (pamphlets). He pointed out that the Law of Publication refers expressly to the author, publisher or printer. According to the contention of Dr. Fischer, if a newspaper printed a seditious article and sent out coolies to distribute the papers, the coolies could not be prosecuted. The prosecution argued that any person who aided and abetted was equally guilty and could be charged as a principal.

The Court dismissed the charge against the accused represented by Dr. Fischer, ordering him to sign only a personal bond to keep the peace.

The peculiar conditions in the Settlement in connexion with the anti-foreign movement and the anti-British boycott resulted in a series of petty cases which could be classed also as cases against order in the Settlement. A number of Chinese were charged with damaging property of the British-American Tobacco Co., by defacing and destroying their posters. In some cases the posters were destroyed at the instigation of rival Chinese firms. In respect of the damaging of posters this extravagant mischief could easily come under the operation of Art. 406 of the Chinese Criminal Code, but it was difficult to frame charges of posting new notices in place of damaged ones under any provision of the Code.

Special Police  
Law for Preserva-  
tion of Order:  
1925.

All the above charges were framed under Art. 406 and Art. 21 of the "Special Police Law for the Preservation of Order." This law came into force from the date of its promulgation, i.e., from March 2nd, 1914, and was revised on August 29th, 1914, but has never before been applied in the Mixed Court. In the interior of China the infliction of penalties according to this law pertained to the administrative authority of a Hsien or City Magistrate and Special Police Courts, where such courts were functioning. On this occasion the Mixed Court resolved to apply it in view of the extraordinary state of affairs in the Settlement, sentencing the prisoners according to Reg. 37 of the same law to imprisonment for 20 days or a fine of Mex. \$20.

The introduction into the practice of the Mixed Court of the Special Police Law for Preservation of Order set a very important precedent in the practice of the Shanghai Municipal Police, bringing it into conformity with the respective Chinese administrative regulations, a procedure which is absolutely necessary at the present moment in view of the general state of political affairs in Shanghai.\*

\*Crim. Case of Ching Chien-hwo *et al* ("Shanghai Journal of Commerce," "Eastern Times" and "China Times") before Messrs. Kwan and A. J. Martin, May 14th, 1926. The defendants were charged under Art. 21 of this law for having published an inflammatory article inciting persons to commit a breach of the peace. Crim. case of Wao Sul-chu, Editor of the "National Herald," before Messrs. Loh and Tajima. May 22nd, 1926. The same charge.



## CHAPTER XVI.

### CIVIL AND CRIMINAL PRACTICE OF THE MIXED COURT, 1925-1926.

#### CIVIL PRACTICE. General Remarks.

In spite of the most unfavourable conditions in which the Court found itself in 1925 and 1926, its organic progress has not been interrupted for a single moment.

The political and social turmoil, which ensued as the result of the events of May 30th, did not affect its operation. It continued to function normally notwithstanding the atmosphere of animosity and obstruction on the part of the Chinese officialdom, which surrounded the Court.

As a matter of fact, the number of Chinese civil cases filed during June, July, August and September, 1925, was considerably lower (50 per cent.) than that for the corresponding months in 1924, but still the confidence of the public, gained by the Court in the course of the last fourteen years, could not be lastingly shaken by "anti-Court" propaganda.

In October, November and December, 1925, the number of cases rapidly increased and again attained the normal figure.\*

#### Constitution of the Bench in case of difference of opinion between the Magistrate and Assessor, 1926.

The principle of the withdrawal of the Bench in cases of disagreement between the Magistrate and Assessor and reference of the case to a differently constituted Court for a new trial, which in the period of 1916-1924 assumed a definite form only in cases where Russian litigants were concerned,† received in 1925-1926 a new impulse in the case of *The Scandinavian Brewery Co., Ltd. vs. The China Trading Co., et al.*‡

In a letter to the Registrar of the Court, Mr. N. Aall, Consul-General for Norway, endorsed the order of the Court for the reference of the case to a differently constituted Court in which an Assessor of a different nationality replaced the original Assessor.

This set a new precedent in the practice of the Court bringing it closer to the true international character, which in theory it holds.

#### Uniformity of decisions of the Court, 1925.

Pursuing the policy of eliminating conflicts in its practice, inevitable in a Bench constituted of co-judges of different nationalities and consequently of different legal training, the Court, in the cases of *Dzung Zung-y vs. Dzung Chuin-dzung*, December 11th, 1924, and January 16th, 1925,§ tried to establish the first precedents in dealing with conflicting Court orders.

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\*The number of all Chinese civil cases filed with the Court during 1925 amounted to 1,496 showing only a slight decrease of 86 as compared with 1924. In 1926 the number of cases reached the record figure of 1793.—AUTHOR.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 224.

‡F. C. C. 5336 *Scandinavian Brewery Co., Ltd. vs. The China Trading Co., et al.*, before Messrs. Loh and T. Sivveland, Norwegian Assessor. Order of December 23rd, 1925, reads, as follows: "As the Magistrate and the Assessor cannot agree as to the responsibility of the fourth defendant the case should be re-heard by either an American or British Assessor and another Magistrate to be selected by the Registrar."

§C. C. C. 3223A. before Messrs. Yui and J. E. Jacobs, American Senior Assessor, C. C. C. 3391-A. before Messrs. Oen and H. Tajima, Japanese Assessor.

In both lawsuits heard before differently constituted Courts, the Court gave conflicting orders with regard to an *interim* injunction asked by the parties on *ex parte* application. The question was referred to Mr. J. E. Jacobs, Senior American Assessor, who expressed the following opinion :

" It appears from the records that the case before Mr. Tajima was brought up for hearing prior to the hearing before me and Magistrate Yui, and for that reason any change in the orders for the purpose of uniformity should be made in the orders made by Mr. Yui and myself."

The problem, of course, cannot be taken as finally disposed of by the above-cited opinion of the American Assessor, but it manifests the first attempt of the Court to approach a solution which even a few years ago was considered too difficult.

The instructions of the Consular Body, dated July 16th, September 15th and October 2nd, 1924, with regard to cases in which parties of German nationality appeared as plaintiffs or defendants, were strictly upheld.\*

Constitution of the Bench. German cases to be tried by Assessors of Neutral Powers 1925-1926.

The principle that " in cases where a German plaintiff sues a Chinese defendant and *vice versa*—or where a German defendant is sued by a foreigner enjoying extraterritorial rights, the case shall be tried by a special Assessor† and the Magistrate," which appeared first as an experiment, did not arouse protests, but on the contrary, the application of the German language at the trial served much to facilitate the procedure of the litigation, particularly in petty criminal and civil actions. The Consuls of Foreign Powers enjoying the privilege of extraterritorial jurisdiction waived their right to send their Assessors to sit in cases against Germans in which interests of their nationals were involved.

The question with regard to the nationality of the litigants and jurisdiction of the Court has always been one of the most complicated problems in the practice of the Mixed Court.‡ All efforts of the Court to solve this problem have proved to be unsuccessful owing to the discretionary power exercised by the Consuls to claim as their nationals or *protégés* persons of native and foreign descent. The Court has had to bow before the certificate of a Consul, being powerless to touch upon the point even in the presence of weighty evidence to the contrary. It was deprived of the right to give to the aggrieved party a just chance to prove that the party seeking exemption from the regular jurisdiction of the Court was not entitled to such an exemption, either by virtue of birth or by naturalization in that country whose Consul had claimed him as a citizen or *protégé*.

Jurisdiction with regard to nationality.

Meanwhile in view of the peculiar constitution of the Mixed Court and the existence of extraterritorial jurisdiction in China a correct definition of the nationality of a party to an action in the Mixed Court is a very important matter.§ In some cases it

\*See " Shanghai : Its Mixed Court and Council,"—1842-1924, pp. 288, 289.

†Messrs. J. Van den Berg, Netherlands Assessor, T. Siqveldand, Norwegian Assessor, and F. Kœstli, Swiss Assessor.

‡As a curiosity in respect to the nationality with which the Court has to deal we may cite the Criminal Case of Saint Chan *alias* Jaon Marcos, before the Court on April 2nd, 1925. In this case the accused produced a passport issued in his name at Panama City by the Spanish Consulate acting on behalf of the Greek authorities. He stated, however, that he was a Brazilian citizen born in Santos, Brazil, of Chinese parentage.—AUTHOR.

§See " Shanghai : Its Mixed Court and Council "—1842-1924, p.174.

means a complete exoneration from the Mixed Court jurisdiction, and, in some, alteration of the constitution of the Bench.\*

The abnormality of this position has always been very acutely felt, but neither the Court nor the Consular Body have under the restraint of treaty stipulations been able to find a proper solution, and the aggrieved party had no other option but to file a complaint with the Consular Body, the Chinese Commissioner for Foreign Affairs and, through the latter, with the respective Ministers at Peking, thus introducing a new element into the judicial action at issue. This element was the administrative discretion of a diplomatic authority, which had nothing to do with the judicial function, and which deprived the proceedings of the indispensable principles of controversy and publicity.

\*In order to illustrate the actual position which existed before 1925, it is interesting to cite *in extenso* the cases of Dzung-Zau-tchung vs. Oo-Meu-daung and Oo-Meu-daung vs. Wu-Chang-mow filed with the Court on November 1st, 1923, and October 31st, 1924, respectively.

The fact of both cases in brief are, as follows:

On the 31st day of October 1923, Oo-Meu-daung brought an action in the Mixed Court to restrain one named Wu-Chang-mow from negotiating certain cheques aggregating \$103,000. The Court granted the injunction as prayed and ordered the defendant to put up security in the sum of \$20,000. Both litigants being Chinese the case was filed as a Chinese Civil Case.

On November 1st, 1923, one Dzung-Zzu-tchung, an alleged Portuguese, brought suit against the plaintiff in the former case, Oo-Meu-daung, in the amount of \$93,000 on certain of said checks. In the meantime Wu-Chang-mow, the party to whom said checks had been given was not to be found. Oo-Meu-daung was arrested on a summons for immediate security by the Portuguese Assessor and held for \$50,000 security, which he furnished regardless of the fact that an order had been previously issued restraining the negotiation of the cheques in question.

Of the parties in the latter action one being of Portuguese nationality and the other Chinese, the case was filed as a Foreign Civil Case.

Thus two actions, practically having the same subject, owing to the difference of nationality of one of the parties were put before differently constituted Courts and resulted in two mutually contradictory orders.

Moreover, further investigations on the part of Mr. R. T. Bryan, Jr., of Davies & Bryan, acting on behalf of Oo-Meu-daung, revealed an undisputable fact that the alleged Portuguese of Chinese descent Dzung-Zau-tchung was not and could not be a Portuguese citizen. He was a native of Kiangsu, born in Shanghai, 26 years old, former employe of the Municipal Council, and had never left Shanghai for a more or less considerable time in order to be able to become naturalized in a foreign country. As a result of this, Mr. R. T. Bryan, Jr., lodged a protest with the Consular Body stating that the case was nothing more nor less than a Chinese civil action and must go before one of the Assessors sitting regularly in Chinese civil cases or before an Assessor the interests of whose nationals was involved in the case.

This contention solved the question of uniformity and ensured to both parties equal justice. However, the point raised by Mr. R. T. Bryan, Jr., obviously exceeded the power of the Consular Body in respect to their individual members, representatives of Sovereign states:

"The question of whether a Chinese may or may not renounce his own and adopt foreign nationality is one which can be decided only by the authorities of the Power concerned, while the sole person competent to determine whether a foreign interest is involved in any case or not is the consular representative of the nationality concerned."—Com. G. De'Rossi, Consul-General for Italy and Senior Consul to Messrs. Davies & Bryan, Nov. 14th, 1923.

There was no other option left to the aggrieved party than to file a protest with the Chinese Commissioner for Foreign Affairs and the Portuguese Minister at Peking, Mr. R. T. Bryan, Jr., acting on behalf of Oo-Meu-daung advanced the following reasons for the withdrawal of the Portuguese Assessor from the Bench as co-judge: (1) That it was a well settled rule of International Law that a citizen cannot at will renounce his allegiance without the consent of his Government; (2) That under International Law a citizen in order to become expatriated must not only emigrate to the country of which he wishes to become a citizen but must become naturalized there; and (3) That the Chinese Government had passed an act, which provides that a Chinese citizen may not renounce his nationality unless he first obtains the consent of the Ministry of Interior (Mr. R. T. Bryan's letter to the Portuguese Minister at Peking, Nov. 17th, 1923).

The Portuguese Minister agreed with the contention of Mr. R. T. Bryan, Jr. (Statement of R. T. Bryan, Jr. at the session of the Court, December 20th, 1923 before Messrs. Yui, J. E. Jacobs and R. Carvalho) and at the session of the Court on December 22nd, 1923, Mr. R. Carvalho, Portuguese Assessor, announced "that the Portuguese Consulate-General was prepared to waive temporarily the foreign status of the plaintiff," and the case was tried as a Chinese civil case.

This action of the Portuguese authorities, however, did not alter the general position. On the contrary, it emphasized once more the dependence of the Mixed Court upon the administrative discretion of diplomatic authorities.



Moreover, the evidence brought in support of the allegations made in the complaint with regard to the personal status of the party in question lacked judicial examination in open Court, and thus the issues never had the necessary authority.

In July 1925, the question of the Court's authority in matters relating to the nationality of litigants of alleged foreign citizenship came once more into the limelight in connection with the sensational case of *S. Steglow vs. Kong-kyi and Soo Sock-dzien*.\*

Case of S. Steglow  
vs. Kong-Kyi et  
al, 1925.

In the petition filed on August 10th, 1925, Mr. J. Em. Lemièrre, acting on behalf of S. Steglow, alleged to be a Brazilian citizen, stated that the defendants representing themselves as agents of the lawful Chinese Government did on July 21st and 22nd, 1925, enter into a contract with the plaintiff for the purchase of arms, ammunition and accoutrements for which they undertook to supply the plaintiff with a proper written permit issued by the competent authorities, which, however, they failed to do rendering impossible the execution of the contract.

The plaintiff claimed Tls. 200,000 "as liquidated damages" provided for, as alleged in the petition, by one of the clauses of the said contract.

On July 30th, 1925, the case came up for hearing before the Court composed of Magistrate Sung and Mr. M. Benza, Brazilian Assessor.

On September 9th, 1925, the Commissioner for Foreign Affairs at Shanghai, Mr. Hsu Yuan, informed the Senior Magistrate of the Mixed Court that he was in receipt of a telegram from Tupan Ngauh of Honan Province stating that the defendants were the legally authorized representatives of his army delegated to come to Shanghai with an army permit to purchase arms, and that the allegation of the plaintiff that they had represented themselves falsely as being military officers was untrue, and the Senior Magistrate was requested to take the necessary steps to ensure justice.

On September 22nd and 24th, the Commissioner reiterated his previous despatch adding this time that he was in receipt of another telegram from the General of the Soong Wu Martial Law Area informing him that the defendants were legally authorized officers and that the money deposited in the banks, where it had been restrained by order of the Court on plaintiff's application, belonged to the Chinese Government.

On September 26th, 1925, Mr. A. M. Preston, of Ellis & Hays, representing one of the defendants, filed an application that the action be transferred to the Chinese civil list of the Court on the ground that the present Court was not properly constituted to try the action, and was therefore incompetent to do so, in that the plaintiff was a Russian and not a Brazilian citizen.

However, the Brazilian Assessor declined to hear the application under the pretext that "neither the Brazilian Assessor nor the Mixed Court Magistrate are competent in a question of Brazilian nationality, the sole competent authority being the Consul for Brazil."†

\*Filed with the Mixed Court as Brazilian F. C. C. 6980, July 30th, 1925.

†Mr. M. Benza to the Mixed Court Registrar, September 20th, 1925.

Thus the action entered into the same phase of an administrative complaint, which the aggrieved party had to lodge with the Consular Body, the Commissioner for Foreign Affairs and further with the Minister for Brazil in China.

The Consular Body refused categorically to interfere in any shape or form in the action on the ground that as far as the question of nationality was concerned it was within the competence of the authorities of the Power concerned.

The Commissioner for Foreign Affairs acting under instructions of the higher military authorities also tried to solve the problem. He sent instructions to the Senior Mixed Court Magistrate stating that as the plaintiff was according to the statement of three Russian witnesses, a Russian, and not a Brazilian, he was to be subjected to the jurisdiction of the Chinese court. The Brazilian Assessor had no right to sit at the trial, and that even if the plaintiff were of Brazilian nationality, still the case was to be tried by the Mixed Court Chinese Magistrate without any interference on the part of the Brazilian Assessor by virtue of Art. 9 and 10 of the treaty between China and Brazil.\*

Neither this contention, nor the administrative efforts of the Commissioner could solve the problem which became more entangled in view of differences of opinion between the sitting Magistrate and Assessor. The allegations of the aggrieved party remained unsupported by any evidence verified in open Court and the whole issue was driven into semi-secret diplomatic channels, which had nothing to do with the operation of justice.†

In view of this fact the Consular Body on November 23rd, 1925, forwarded to the Registrar of the Court the following instructions, which since then has formed the basis of all the subsequent practices of the Court :

"The Consular Body is of the opinion that if the question of the nationality of either party is raised in the course of the hearing so as to involve the question of Chinese jurisdiction over such party, the Court should hear the evidence on the question and in the event of disagreement between the Magistrate and the Assessor the question can only be settled by negotiations between the superior authorities of the Government concerned."‡

The importance of this ruling need not be explained. It has once for ever put an end to one of the most unsettled issues of the

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\*Art. 9 of the Chinese treaty with Brazil states that in cases of lawsuits between Brazilians and Chinese in China such should specially be tried and decided by the officials having jurisdiction over the defendant. Art. 10 of the same treaty states that in the various cases of disputes, property disputes and crimes committed by the citizens of the two countries, these should all be tried and decided by the officials having jurisdiction over the defendant.—Commissioner for Foreign Affairs to the Senior Mixed Court Magistrate, October 27th, 1925.

†The case was amicably settled out of Court.—AUTHOR.

‡Interpreting and extending further the meaning of "authorities" competent to settle the points in dispute, the Consular Body informed the Registrar that the words "some competent authorities occurring in the Senior Consul's letter of January 28th, 1913, to the Chairman of the Municipal Council have already been interpreted by the Consular Body as meaning 'any other Consul.' The only foreign authority, therefore, who is competent to object to the setting of a case for hearing before the Assessor of a Consul, who has claimed interest therein is the Consul of another country who also claims interest therein and who, on applying by letter to the Mixed Court can also send his Assessor to sit at the hearing. It is understood that all letters claiming interest will state the grounds on which such interest is claimed."—Mr. Edwin S. Cunningham, U.S. Consul-General and Senior Consul, to the Mixed Court Registrar, June 2nd, 1926.

See "Shanghai: Its Mixed Court and Council"—1844-1924, p.p. 174, 175.

Mixed Court, which has exposed it to the severe criticism of its opponents. It has settled the question of publicity, which enables the parties to ask the Court, after having produced their evidence, to refer the case officially to the respective diplomatic authorities for further consideration.

Furthermore, it enables the Mixed Court Magistrate at his own discretion to lodge a protest with the Commissioner for Foreign Affairs, and the latter to have the necessary legal proofs to forward it further to the Waichiaopu.

On August 19th, 1925, a Swiss firm O. Fisher, filed an action against one named Zung-Kung-yui. The case came up for hearing on an *ex parte* application for summons for immediate security before the Court constituted of Magistrate Sung and Mr. Zuber, Swiss Assessor, who granted the application. It was not until January 28th, 1926, that the defendant was arrested. When taken into custody, the defendant was found to be in possession of a certificate issued by the Brazilian Consulate at Shanghai stating that Zung Kung-yui was a Brazilian citizen. Upon being informed to that effect Mr. J. E. Wheeler, Registrar of the Mixed Court, gave instructions that he was to be brought to his office and produce the certificate. The defendant was questioned as to the nature of the document in his possession and he stated in reply that this certificate was issued by the Brazilian Consul, who personally signed it and promised him every protection.

Case of C. Fisher  
vs. K. Y. Zung,  
1926.

He, the defendant, was by birth a Chinese, had never left China, knew nothing about Brazil or the contents of the certificate written in French. He was introduced to the Brazilian Consul by one of his intimate friends and sought foreign protection on the ground that he was afraid "of Chinese robbers."

This statement he made in writing in the presence of the Registrar and several foreign and Chinese witnesses, who signed it.

The whole matter was at once referred to the Court, before which the defendant again repeated his statement repudiating any knowledge of the contents of the certificate.

After having heard the evidence of the Registrar, witnesses and the defendant himself Mr. Zuber said, as follows :

" I think it is a disgrace that such a document should be produced as that which has been produced to-day in this Court. It has been delivered by a representative of a nation which enjoys extraterritorial rights in China to a Chinese who has never been in Brazil and who has no right whatever to claim Brazilian citizenship. It is not only a disgrace but a direct violation of the sovereign rights of the Republic of China to judge its own subjects according to the Treaties made with other nations. The matter has therefore to be brought to the knowledge of the Commissioner of Foreign Affairs as well as the Consular Body."

The Court then gave the following decision :—

" The Court assumes jurisdiction over defendant K. Y. Zung. Defendant produced at this hearing a certificate of Brazilian citizenship. Defendant stated that his home was in China and the reason for this registration was the suffering he had from the soldiers. The registration was effected through Mr. Yang. The Court will have these circumstances referred to the Commissioner of Foreign Affairs who will communicate with the Senior Consul in this matter. The certificate produced by the defendant will be temporarily kept by the Registrar."



We think that no further comment is required, and it is only to be hoped that the Consular Body having once undertaken to strengthen the authority of the Court against any illegal action with regard to the evading of the Court's jurisdiction will continue strictly to adhere to this principle.

The terms, in which the instructions of the Consular Body of November 23rd, 1925, were couched, excluded any possibility of misunderstandings in respect to the operation of the treaties granting the privilege of extraterritorial jurisdiction to foreigners. The ruling of the Court composed of Messrs. Kuan and A. D. Blackburn, Senior British Assessor, in the case of Fokien Arsenal vs. Pang Sung-chin on May 11th, 1922, saying that the foreigners of Chinese descent in case of any dispute over their nationality had to plead jurisdiction,\* gave rise to conflicts with some of the foreign Consuls, who objected to the personal appearance of their nationals in the Mixed Court considering this as a violation of their consular prerogative† and the law of their country. According to the ruling of the Consular Body of November 23rd, 1925, the party whose foreign nationality is in dispute, is left at liberty to appear personally or through his agent *at litem* in Court to plead jurisdiction, but his absence did not prevent the opposing party from producing evidence and lodging a protest with the respective Chinese authorities.

Court's jurisdiction in cases against Soviet Commercial enterprises at Shanghai. Case *Rizæff Freres vs. Russian Volunteer Fleet alias Soviet Mercantile Fleet (Sovtorgflot)*, 1926.

Following the principle of the extension of its jurisdiction in cases in which citizens of Powers not enjoying extraterritorial rights and amenable to the jurisdiction of the Chinese courts were concerned, the Court assumed jurisdiction over commercial enterprises owned by such Powers.

The Court assumed the view that a State carrying on a business and pursuing purely mercantile interests as a private person or concern, waives thereby its right to any exemption from general jurisdiction in matters relating to these interests, if such an exemption has not been specifically laid down in its statutes or treaties with other Powers.

The aforesaid principle led the Court composed of Messrs. Yui and H. Bucknell to assume jurisdiction in the case of *Rizæff Frères vs. Russian Volunteer Fleet*‡ filed with the Court on December 17th, 1925.

In this case the plaintiffs sued the defendants for damages arising out of breach of contract and alleged that the Soviet Mercantile Fleet were assignees and/or representatives in title of the Russian Volunteer Fleet,§ which announced the closure of its

\*See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 290, 291, 292.

†As an instance of such objections we may cite F. C. C. 6193—*Berenson, Untermans and Schipper vs. Woo-Zung-Hong et al*, October 27, 1924, heard by Magistrate Sung and J. P. d'Hondt, Belgian Assessor, in which the third defendant Phen-Kyok-hsien, a Portuguese of Chinese descent was arrested on a warrant issued by the Portuguese Consul-General on March 24, 1925, for having put up security on a summons of the Mixed Court, and consenting to abide by the order of that Court.—AUTHOR.

‡C. C. C. 4885a.

§Lloyd's Report for 1925-1926: Chinese Maritime Customs' Bulletin, December 20th, 1925; Bill of Lading of the *Sovtorgflot* issued by the R. V. F. in Shanghai, May 5th, 1925; Letter of Mr. R. J. Ellerder, dated September 17th, 1925.

offices in Shanghai on December 24th, 1925, just on the date when an attempt to effect the services on the defendant was made.

The defence, while admitting in general the allegations of the plaintiffs, stated (a) that the Sovtorgflot was a governmental institution controlled by the Peasants and Workers Inspection Department\* and that its capital was owned partly by the Commissariat of the Communication and that of Foreign Trade. There was no private capital invested in the company, which had no connection with the R. V. F. a private concern. (b) The steamers formerly running in the Far East and operated by the R. V. F. were taken by the Sovtorgflot in Vladivostok following an order of the Central Soviet Government vested with the most extensive power of nationalization of private Russian property especially as far as public utility institutions were concerned.

The crux of the defence, however, was the fact that the Sovtorgflot, as a Government institution is a part of the Government of the U.S.S.R. itself, and, as such, enjoys the privilege of exemption from general jurisdiction.

In support of this contention Dr. O. Fischer, of Musso & Fischer, representing the defence, cited in his brief filed on March 5th, 1926, a series of leading cases from the Courts of the United States of America and Great Britain, in which the principle of exemption of a State as a sovereign power from general jurisdiction was solemnly declared and upheld.†

The question before the Court, in his opinion, was one which formed the subject of diplomatic negotiations between the respective Governments, but not a subject of consideration for any court including the International Mixed Court at Shanghai, the jurisdiction of which does not extend to matters involving such issues.

The Court, however, as stated above, did not agree with his contention and assumed jurisdiction in the case.‡

The procedure of *ex parte* applications to the Court, so frequently abused in the past,§ occupied the Court's attention in many cases in 1925 and 1926.

Applications for leave to sue *in forma pauperis* were reviewed by the Court, which since 1925 has invariably required from the applicants proof of their financial standing and the extent of their property. In case the applicant is represented by Counsel the Court will grant applications for leave to sue *in forma pauperis* only in the event of the counsel not having received any retaining fee.

On the other hand, in matters concerning the grant of *ex parte* applications for summons for Immediate Security|| the Court increased the responsibility of the applicants. Under the former system, which prevailed until 1914, all defendants to actions in the

*Ex parte* applications 1925-1926.

for leave to sue *in forma pauperis*.

for summons for immediate security.

\*Evidence of Messrs. R. J. Ellerder, I. S. Sorokin and I. O. Sokolinsky, Manager of the Sovtorgflot at Shanghai.

†*Beers et al v. Arkansas*, 20 How. 527, 529; *Hans v. Louisiana*, 134 U.S. 1.16; *Chislaw v. Georgia*, 2 Doll. 460; *Osborn v. Bank of U.S.* 9 Wheat. 738; *Davis v. Gray*, 16 Wall. 303; *Board of Liquidation v. McComb*, 92 U.S. 531; *U.S. v. Lee*, 106, U.S. 196; *Polindexter v. Greenhow*, 109 U.S. 63; *Virginia Coupon Cases*, 114 U.S. 269; *Briscoe v. Bank of Kentucky*, 11 Pet 257, 325; *Sir Williams Blackstone, Jones' Blackstone*, Vol. 1, p. 361.

‡Court's order dated March 25th, 1926.

§See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 293, 294.

||See *ibid* pp. 293, 294.

Mixed Court were required to furnish immediate security for the amount claimed at the time when the petition was served. This iniquitous practice, which placed it within the power of any unscrupulous man to secure the temporary detention of even the most reputable Chinese merchants upon any trumped-up claim, was fortunately abolished. It was founded, no doubt, upon the theory that many defendants upon learning that a petition had been filed against them, would leave the jurisdiction of the Court at once, and it was one of the causes of the almost universal fear of the Court. Subsequently to the abolition of this very harsh rule, the practice was that the plaintiff might have the defendant placed under immediate security to such amount as the Court might think fit (usually the amount claimed) if he satisfied the Court that the defendant was likely to abscond. The ease with which this could be accomplished was apparent, and applications for immediate security became of frequent occurrence. The application was required to be in writing, in the form of a motion, but the evidence in support was verbal, generally vague and seldom recorded. As a deterrent to reckless applications the Court adopted the practice of placing the plaintiff upon security so that if his application proved to be without foundation the Defendant had some remedy. This remedy has on several occasions been successfully applied.\*

It was soon apparent, however, that the lack of record of the evidence of applicant enabled him to evade retaliation and, therefore, the Magistrates and the Assessors issued a joint ruling to the effect that after April 1st, 1926, "all interlocutory applications to the Court, whether made in Chambers or otherwise *ex parte*, must be supported by evidence in writing in the form of a solemn declaration or declarations of a witness or witnesses. Any such declaration shall be signed and declared in the presence of the Registrar of the Court or such other officers as he shall for that purpose appoint."†

Petitions for record of divorces 1925-1926.

The practice of the former Chinese Magistrates in respect to petitions for record filed with the Court is still continued. This specific Chinese procedure retained by the Mixed Court in its contemporary practice as a substitute of the Western notarial system, however, underwent a change in respect of recording Chinese divorces. Since 1923 the Court refused such petitions in view of the introduction of divorce procedure in China except in cases of petitions for record of dissolution of concubinage,‡ but in the case of *Kwhe Tsung-wu vs. Kwhe Dan-sz§* submitted to the Court on January 19th, 1925, Magistrate Yui and Mr. A. J. Martin, Senior British Assessor, contrary to the previous practice, ordered

\*C. C. C. 4435a *Wong Kwel-ching vs. Li Aung-sung*, before Messrs. Yui and H. Bucknell. Court's order, December 4th, 1925: "Plaintiff ordered to pay the defendant \$1,000 as damages arising out of his detention on a summons for immediate security." C. C. C. 4538 *Ung Sing-young vs. Yui Tsing-ming*, C. C. C. 4539a *Loh Dong-foh vs. Yui Tsing-ming*, and C. C. C. 4540a *Dzung Yui-yoen vs. Yui Tsing-ming et al*, before the same Court, Court's orders November 27th, 1925; C. C. C. 4712a *Zau Yui-kyl vs. Loh Keu-kyl* before Messrs. Oen and H. Hamilton, Court's order February 24th, 1926, etc.

†See Appendix.

‡C. C. C. 4712a *Zau Yui-kyl vs. Loh Keu-kyl*, before Messrs. Oen and H. Hamilton, Court's order of February 24, 1926, etc.

§See "Shanghai: Its Mixed Court and Council,"—1842-1924, p. 295.



that a petition for record of a contract of dissolution of matrimonial bonds be filed with the Court on the ground that such procedure was recognised by the Supreme Court of China.

On the other hand, the Court also extended its practice in divorce cases in which the parties to the action were unrepresented foreigners of Russian nationality of Greek-Orthodox religion.\* In the case of E. G. Timofeeff *vs.* A. J. Timofeeff, Messrs. Yui and H. Bucknell, Senior American Assessor, established on September 23rd, 1925, a very important precedent by granting a decree of absolute divorce in accordance with Art. 11 of the Rules for the Application of Foreign Laws, August 5th, 1918, which the Court up to that time refused to do in view of the existing specific procedure for divorce applied in the Russian Ecclesiastical Courts.†

Russian divorce cases, 1925-1926.

In the same order the Court allowed the plaintiff to assume her maiden name. Thus the tendency of the Court to alleviate the divorce procedure for the numerous Russians residing in Shanghai in 1924 became in 1925 more pronounced, indicating the start of a complete independence of Russians residing in China from the old Russian-Orthodox ecclesiastical institutions still functioning in some places of China.‡ Of course, it was good only for those cases, in which the parties did not intend to enter into new matrimonial bonds according to the Russian Ecclesiastical Law for the Russian Church still refuses to recognise the validity of divorces granted by the Mixed Court.

The policy of the Court in not allowing the detention of judgment debtor in the cells of the Mixed Court Detention House, transforming it into machinery for the revenge of an unsatisfied creditor or for bringing pressure upon the family of the unfortunate debtor, was still maintained by the Court in 1925-1926. Releases were invariably granted in all cases where the judgment creditors failed to prove within a certain specified time the ability of the debtor to pay. However, in the case of Ching-Khaung Bank, in liquidation, the Court refused to release the manager after having had him detained for more than two years.§

Detention of judgment debtors, 1925-1926.

In taking such a decision, which should be considered as an exception of the common rule, the Court was guided by the amount involved, which approached the sum of Tls. 300,000, and also the proved history of the manager's misdeeds subsequent especially to the failure of the bank. The defendant, in spite of his long detention, refused obstinately to comply with the order of the Court and disclose the names of the responsible partners of the bankrupt bank. It should be acknowledged that in refusing to grant reiterated petitions for release from custody and resorting practically to an indefinite detention of the debtor the Court displayed great hesitation, and only insistent requests on the part of the numerous creditors prevented it from releasing him.

The measure taken by the Court in this particular case was entirely justified, as owing to the detention of the obstinate debtor,

\**Ibid* p. 231.

†C. C. C. S. Uritsky *vs.* U. Uritsky before Messrs. Oen and H. Hamilton, May 19th, 1926.

‡Russian-Orthodox Consistories at Harbin and Peking.

§The defendant was taken into custody on October 17th, 1923.

the creditors succeeded finally in arresting one of the partners of the insolvent bank.

Bankruptcy pro-  
cedure, 1925-  
1926. Court,  
Accountants.

The practice of the Court in bankruptcy cases in the main did not require any change. It has proved in course of time more than successful under the circumstances in respect to all matters concerning Chinese bankruptcy, voluntary liquidations, etc., but the status of the Mixed Court Accountants is still the object of consideration on the part of the Court and the Consular Body.

According to Article 2 of the agreement of March 15th, 1923, between the Consular Body and Seth, Mancell & McLure, Shanghai, appointing this firm of chartered accountants and auditors as Official Court Accountants, all appointments and work relative to and connected with bankruptcies, liquidations, receiverships, administrations, audits, accountancy and similar proceedings should be given *solely* to the Official Court Accountants.\*

This fundamental clause of the agreement, which enabled the Court Accountants to maintain an efficient staff to cope with the work, aroused protests on the part of interested parties who considered it as a monopoly in favour of the firm of Seth, Mancell & McLure to the detriment of the right of the parties to select at their discretion any suitable person or persons as administrators, liquidators, receivers, etc. Furthermore, clauses relating to the Court Accountants' work stipulated a fee of five per cent. charged on all cash received, divided and distributed and a *pro rata* charge of ten per cent. on all moneys collected not being cash in the first instance taken over on entering into possession or proceeds of sale by public auction.† This scale of fees also aroused frequent protests particularly in the matter of bankruptcies and family disputes and administration of estates when the exclusive right to wind up the business or administer the estate was claimed either by the creditors or the lawful heirs of the deceased.

In view of the fact that some objections were well founded, the Court in a number of cases made certain concessions in favour of the parties and appointed administrators and trustees selected by them.‡

These orders of the Court aroused in turn a general protest on the part of the Court Accountants, and, though they finally withdrew their protest, the matter was referred to the Consular Body.§

Court Account-  
ants and Court  
Auctioneers' Se-  
curity, 1925.

The liquidation of Messrs. W. Funder & Co., Official Mixed Court Auctioneers, which happened in 1924, raised the question concerning the necessity for the firms acting as official court accountants and auctioneers to furnish security for the sums passing through their hands.

\*See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 259.

†For particulars see *Ibid* p.p. 259, 260.

‡C. C. C. 4413a, Nyl Tshang-sung *re* estate of Wong Dxi-daung, deceased, before Messrs. Yui and H. Bucknell, Senior American Assessor. Order of November 4th, 1925.

C. C. C. 4738a, V. Sonln and B. S. Barbash *re* estate of G. Lamachin, deceased, before the same Court. Order of January 20th, 1926.

C. C. C. 4879a, Dzong Wei-ling *re* estate of Dzong Ah-ping, deceased, before Messrs. Yui and A. J. Martin, Senior British Assessor. Order of February 25th, 1926.

§F. C. C. 7207, *Re* administration of the estate of A. Dattan deceased, before Messrs. Sung and J. Van den Berg, Netherlands' Assessor.

In a letter to C. E. Whitamore, Secretary of the Consular Body, dated December 17th, 1924, Major F. L. Wainright, the Registrar of the Court, suggested that the Court Auctioneers should furnish a guarantee from a reputable bank for Tls. 1,000, as security for the sums which passed through their hands in their capacity of Court Auctioneers, while the Court Accountants should furnish an indemnifying bond of the Commercial Union Assurance Co., Ltd., for Tls. 100,000. The premium on this account should be recoverable from the assets realized in every action, the estate being charged by the insuring company. This rate to be one-half per cent. owing to the exceptionally good standing of the Court Accountants.

The average cash in the possession of the Court Accountants was from Tls. 50,000 to Tls. 75,000. Besides this cash they frequently had the custody of *fangtans* and other documents of value. However, in spite of the seemingly high remuneration of their services according to the agreement with the Consular Body their average net profit was, according to the statement of the Registrar, hardly sufficient to justify any taxation of their incomes even in the form of an obligation on their part to pay the before-mentioned one-half per cent.

It was also proposed that in both cases the Consular Body should reserve its right to raise the amount of security as well as the indemnity to be charged by the Court Accountants on its own initiative or at the request of the latter.

The proposition received the Consular Body's approval on January 14th, 1925, and was put into effect immediately.

Up to 1918 the extradition of criminals of foreign nationality formed the exclusive subject of direct diplomatic intercourse between the interested Powers and China, and did not come under the judicial cognizance of the Mixed Court. However, the abolition of the extraterritorial privileges of some of the Powers, which enjoyed them prior to the Great War, automatically brought cases of this category within the jurisdiction of the Mixed Court.

On March 22nd, 1926, Mr. F. E. H. Groenmar, Consul-General for the Netherlands, addressed a letter to the Registrar of the Court informing him that he had received a telegram from the Public Prosecutor at Soerabaia (Netherlands Indies) to the effect that the local Criminal Court had ordered the arrest of Robert Weidemann, a German, accused of embezzlement. The Public Prosecutor requested that Weidemann be arrested and the stock of stolen merchandise in his shop seized.

The Consul-General requested the Court to issue an order for the arrest of the accused and a sealing order against his shop, stating that, after execution of the orders, Weidemann might be brought before the Mixed Court where it would have to be decided whether he could eventually be extradited or charged in Shanghai with misappropriation.

On March 22nd, 1926, the accused was arrested and brought before the Court, composed of Messrs. Zau and T. Siqveld, Norwegian Assessor, on a charge for that he whilst in Soerabaia, Java, prior to March 1st, 1926, did appropriate and convert to his own use certain goods to the value of Guilders 10,000. Complainant, Consul-General for Netherlands.

CRIMINAL  
PRACTICE.  
Extradition of  
Foreign Criminals  
1926. Case of  
R. Weidemann.



The defence, represented by Dr. O. Fischer, of Musso & Fischer, raised the question concerning the omission in the charge of the required specifications of time and place, when and where the offence was committed. Further, Dr. O. Fischer stated that according to Art. 2 of the Chinese Provisional Criminal Code the latter can be applied only in cases where the offence was committed in the Republic or in circumstances specially set forth in that Article, while extradition can only be asked for if it has expressly been mentioned in the respective Treaties. The Court agreed with the contention of the defence and decided to refer the question of extradition to the Consular Body for a guiding ruling.

On the other hand Dr. O. Fischer filed on behalf of the accused a brief to the Consular Body, in which he brought forward the following thesis: (1) That according to the general principles of International Law extradition depends solely on the existence of treaty stipulations between the Powers concerned and is measured and restricted by their express provisions and those silent provisions which are necessarily implied; (2) That according to the Treaty of Tientsin, 1862, between the Netherlands and China, Art. VI. "*Netherlands delinquents, who take refuge in the interior. . . shall, after official requisition being made, and after mutual cognizance of the case being taken, be delivered up without delay to their respective judges; they shall not be harboured or concealed.*" That the same principle of extradition is contained in all treaties except only in the Convention between Great Britain and China, Art. 3, July 29th 1886, relative to Burma and Thibet, March 1st, 1894, Art. 15; convention respecting an extension of the Hongkong territory, June 9, 1898, and the convention between France and China for the lease of Kuang-Chou-wan, May 27th, 1898; and France (Government General of Indo-China) and China, arrangement for the maintenance of order on the Sino-Annanite Frontier, April 13th, 1915. With these exceptions, which have the object of regulating border relations, there is no Treaty between China and a foreign nation, which provides for extradition of a fugitive from justice, in case the said fugitive is not a subject of the country in which he is alleged to have committed a crime; and (3) That the Dutch authorities, no doubt, according to their treaty with China can ask for the surrender and extradition of a Netherland's citizen who has committed a crime in Java and seeks refuge in China, but they cannot claim any extension of the provisions of their treaty to a citizen of another power, who has (which is not admitted) committed a crime in Java and seeks refuge in Chinese territory. A treaty stipulation to this effect does not exist.

The Consular Body ruled as follows:

"That in the opinion of the Consular Body no Chinese Court, whether the Mixed Court, or any other, can grant a petition for extradition, unless such petition be accorded with the Diplomatic arrangements made between the Government of the Petitioner and the Chinese Government."\*

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\*Comm. G. de Rossi, Italian Consul-General and Senior Consul, to the M. C. Registrar, April 14th, 1926.

In accordance with this ruling the Court refused the application for the extradition of the accused.\*

The application in 1925 of the "Rules of 1924 for the Assignment of Counsel for Defence of Prisoners without Means" in cases involving capital punishment† was made the subject of discussion between H.B.M.'s Consul-General, H.B.M.'s Crown Advocate, Mr. R. N. Macleod, Honorary Secretary of the British Bar Committee, and Mr. A. J. Martin, Senior British Assessor of the Mixed Court.

Assignment of British Counsel for defence of prisoners without means, 1925.

This discussion resulted in the adoption of some principles under which the lawyers, members of the British Bar, could be assigned by the Mixed Court to defend prisoners without means. The assistance of the British lawyers should be sought by the Senior British Assessor addressing himself directly to them. The method of appointment of a counsel in rotation by the Registrar, as it was decided in the rules of 1924 by the Magistrates and Assessors of the Court was found impracticable on the ground that the right of appointment of a counsel in a British Court rested with the judge.

In case of a non-British Assessor desiring the assistance of a British counsel for defence of prisoners without means, he should also apply through the Senior British Assessor, but the members of the British Bar, while anxious to assist the Mixed Court, preferred not to lay themselves under any binding obligation to others than British members of the Mixed Court Bench.

The question whether the Municipal Prosecuting Solicitor has the right to appear in Court in the rôle of counsel for defendant on a criminal charge was raised on November 18th, 1925, in connection with the appearance of Mr. E. T. Maitland in the Criminal case of Li Tien-zai, before Senior Magistrate Kuan and Mr. H. Bucknell, Senior American Assessor.

Right of the Municipal Council's Prosecuting Solicitor to appear for the defence.

The question was raised by Mr. W. S. Fleming, of Fleming, Allman & Worthington, whose contention was that the Municipal Police were, technically, prosecutors for every criminal case appearing before the Court. Mr. E. T. Maitland was Prosecuting Solicitor, attached to the Police Department of the Shanghai Municipal Council. He was paid by the ratepayers, and was not entitled to appear for a defendant in a criminal action. Complainant, as a taxpayer, had a right to expect that when he came into the Court the Municipal Council would not take a stand against him. No Government or State or authority "permitted" their counsel to defend criminals. Referring to the case before the Court, Mr. W. S. Fleming stated that the accused was a police official and that the idea would get around that the police might commit any crime and if charged would be defended by the Municipal Council.

In answer to the above Mr. E. T. Maitland stated that although his title was Police Prosecuting Solicitor, he was employed by the Shanghai Municipal Council and not by the Police, neither was he attached to the Police. His duty was to defend the Municipal Council and to do whatever they asked him to do. Furthermore, he was a member of the Mixed Court Bar and as such had the right to appear before the Court as a Solicitor.

\*Court's order of April 23rd, 1926.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, p.206.

The Court after carefully going into the matter, however, agreed with the contention of Mr. W. S. Fleming and in overruling the contention of Mr. E. T. Maitland stated, as follows :—

“The Court in noting Mr. Fleming's objection to Mr. Maitland appearing for the accused in this action on the ground that Mr. Maitland is the Police Prosecutor, and an employee of the Municipal Council, and that he is acting in this instance upon instructions of the Municipal Council, through its branch the Municipal Police Department, rules that neither Mr. Maitland nor any other employee of the Municipal Council, acting upon the instructions of the Council will be permitted to appear for the accused in this action.

“In the event that the accused is financially unable to engage counsel in this action the Court will itself appoint counsel on his behalf.”

The ruling of the Court was sustained in the case of *S. M. P. vs. Woo Nyoh-ling, Tsang Foo-dzien and Tsu Ching-yui* on November 30th, 1925, before Magistrate Zau and Dr. F. Ramondino, Italian Assessor. In this case Mr. E. T. Maitland, Prosecuting Solicitor, who appeared at first to defend the accused, members of the Municipal Police, later withdrew, abiding by the previous order of the Court.

#### Appeal.

After an interval, of more than six years, the problem of appeal came up again before the Court. The pressing need of a Court of Appeal, which occupied the attention of the Mixed Court up to 1918, has always been acutely felt in spite of the system of rehearings, which was supposed to substitute appeals in the Court practice.

The aforesaid amendment was not the result of a definite ruling of the Consular Body and therefore the question of the right of an aggrieved party to an appeal, from a legal point of view, could not be taken as shaken in any way\* by the establishment of the procedure for rehearing of cases.

The latter enabled Messrs. Platt & Co., acting on behalf of the defendant in the case of *Vinogradoff vs. China Merchants Steam Navigation Co.*, to file in 1924 a petition in appeal for the purpose of recording such a petition. No further steps were taken in connection with this action and the petition was left in abeyance, filed with other documents relating to the case.†

The revival of discussions in the summer of 1925 between the Diplomatic Body at Peking and the Chinese Authorities concerning the rendition of the Mixed Court and the projected establishment of a Special Court for the Shanghai Special Area with an Appellate Court, caused the parties in some of the civil actions to file applications for leave of appeal.

As a matter of fact, these applications may be called precautionary measures taken by the aggrieved parties to ensure themselves the right to appeal should the negotiations of the Diplomatic Body and the Chinese authorities result in the rendition of the Mixed Court and establishment of a Court of Appeal. The applications were filed within the time prescribed for the filing of applications for rehearing.

\*See “Shanghai: Its Mixed Court and Council”—1842-1924, p.p. 199-201.

†Case of *Vinogradoff vs. China Merchants Steam Navigation Co.*, heard before Messrs. Tsang, Yul and N. A. Ivanov, Consular Body's Special Assessor, and finally Vizenzinovich, Spanish Assessor. Reheard by Messrs. Yul and C. E. Whitmore, British Assessor, in 1924.—AUTHOR.



The Court taking into consideration the above-mentioned and being itself impressed by the possibility of an early rendition of the Court to the Chinese authorities and the establishment of a special jurisdiction in Shanghai, assented invariably to these petitions, and directed the parties to file a petition for record within two weeks from the date of the order, on condition that such a petition shall not in any manner delay the execution of the original judgment.\*

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\*F. C. C. 4020—American Express Co., *vs.* Wei-Lah-dzien *et al.* before Messrs. Yui and J. E. Jacobs, September 30th, 1925. C. C. C. 1672a—Tsin-Ka-pan *et al.* *vs.* Tsen-Tsang-sung, before Messrs. Yui and A. J. Martin, November 23rd, 1925, etc.

## CHAPTER XVII.

### THE MING SUNG UMBRELLA CASE.

#### Two psychologies.

The whole history of the recent conflicts between Chinese and foreigners in China in general, and in Shanghai in particular, is a matter which, strictly speaking, can be explained only by the organic differences of the foreign and Chinese psychologies, which cause them to see the same subjects in different lights.

As a matter of fact, analyzing closely the origin and development of the political and social controversy between Chinese and foreigners during the last five years, we discover a feature which is absolutely unique, a feature which recurs infallibly through all the conscious and sub-conscious mentality of the two peoples. It is the exercise of an absolute obeisance on the part of the foreigners to the principles of legality and law, and of reverence and adherence to traditional customs on the part of the Chinese.

All the ideas and arguments of the foreigners in connection with the political and social issues in dispute are based on legal considerations and law, on international treaties and strict principles of jurisprudence, and—if these fail—on precedents built up in systems, sometimes very profound—able to withstand serious criticism, sometimes very clumsy—falling down at the first sceptical thought. Figuratively speaking, it appears to be a kind of psychological need, experienced by foreigners, which has to be satisfied at any cost, despite the fact that it very often results in many practical inconveniences and deep disappointments.

This sometimes painful process arouses in the eyes of the Chinese only astonishment and mistrust. In their view, treaties and precedents are no more than prejudices, which stand in the way of what they think, rightly or wrongly, to be just and fair. They cannot understand the attitude of the foreigners and their "blind" respect for the law, because, in order to grasp it, they have either to rise to the idea that equity is absolute,\* or to deny entirely the foreigners' motto that jurisprudence is the knowledge of divine and human things, the knowledge of justice and injustice; † to deny the legal axiom that custom and usage as *jus non scriptum* must give way to *jus scriptum*, all that, since the ancient Roman Empire, the nations of the West had inherited.

It required for these nations over three centuries to arrive at the first maxims of law; over ten centuries to build up a theory of

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\*"Omnia judicia sunt absolutoria,"—Gaius, 4,144. cf. Justinien, Just., 5,17, *De off. Jud.* 2.

†"Jurisprudentia est divinarum atque humanarum rerum notitia, justī atque injustī scientia."

"Judicium quod legitimo jure consistit, judicium quod imperio continentur."—Gaius, 4,103.105.

"Coloniarum alia necessitudo est; non enim veniunt extrinsecus in civitatem, nec suis radicibus nituntur; sed ex civitate quæ propagatæ sunt, et jura institutaque omnia populi romani, non sui arbitrii habent. Quæ tamen conditio, cum sit magis obnoxia et minus libera, potius tamen et præstabilius existimatur, propter amplitudinem majestatemque populi romani cujus istæ coloniæ quasi effigies parvæ simulacraque esse quædam videntur."—Aulu-Gelle, *Liv.* 16, §13.

law crowned by the everlasting principle "*Ubi curarent sacerdotes res divinas, ubi Senatus humanas*"; two milleniums to imbibe these principles so as to be rendered unable to do anything without the psychological necessity of finding a justification in law for every action. It is an enormous period if taken in comparison with the history of law in China, ancient and modern, notwithstanding the fact that China is generally considered to have been, since the very commencement of her political history, a State organized on the basis of laws.\*

The code *Tah-tsing-lü-li*, of the late Tsing Dynasty, forming in theory the fundamentals of modern Chinese legislation (or the "*Law Present in Force*" according to the Chinese Supreme Court terminology), is presumed to have been received by the Tsings from the preceding dynasty, and which the latter had received as the heirloom of former dynasties, does not actually form a continual chain of enactments arranged in a harmonious system. Its origin and character are entirely occasional. In the translation of the *Tso-cheun* (Duke Ch'ao, Year VI), by Dr. J. Legge, we find two passages which cast light on the peculiar construction of the ancient Chinese legislation :

"The ancient kings deliberated on (all the circumstances) and determined on (the punishment of crimes); they did not make (general) laws of punishment, *fearing lest it should give rise to a contentious spirit among the people.*"†

And a little further :—

"When the government of Hea had fallen into disorder, the penal code of Yu was made; under the same circumstances of Shang the penal code of T'ang; and in Chow, the code of the nine punishments :—*those three codes all originated in ages of decay.*"‡

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\*Dr. J. H. Plath, "*Die Werke der Königlich Academie der Wissenschaft*," Class I, Vol. X, Section III, Muenchen, 1865 : "The jurisprudence of China was no secret privilege of a caste of noblemen and priests, as was the case of ancient India and partially even in primitive Rome; the laws were promulgated to the whole of the people. Nevertheless no ancient Chinese Code, like Leviticus or the Laws of Mann or the *Leges Barbarorum*, has been preserved."

†Dr. J. Legge, Vol. V. Part II. p. 609. The cited passages refer to the period subsequent to the Han dynasty (175 A.D.).—AUTHOR.

‡A further remarkable passage in the *Tso-chuen* (Ch'ao-kung, Year IV) explains the idea of the whole legislation of ancient China, which found its reflection to a certain extent in the code of the Tsing dynasty with regard to the civil section of it. This passage contains the following statement of Shuh-hiang, the Minister of Tsze-chuan (made by him on the occasion of the casting of the penal code in bronze in the State of Ch'ing) (536 B.C.) :—"The emperors of antiquity devised help in certain events by enactments, they made no penal codes; they feared lest the people might get contentious, when it would be even less possible to restrain them. Therefore they set up a barrier of righteousness, raised the people by government, etc.; they treated the people according to ceremonies, preserved them by faithfulness, honoured them by humanity; they made enactments regarding salaries and ranks of honour, to encourage them to obedience; they decided vigorously in penal matters to restrain them from transgressions. They instructed the people by sincerity, encouraged them by example, educated them by exertion, served them by pleasure; they watched over them with severity. They selected moreover most wise and intelligent high officers, acute judges, faithful and honest elders, benevolent and kind overseers; thus one may place confidence in the people, and no calamity and disorder will arise. *But if the people know that there are laws, they will not fear their superiors any longer, all will incline to litigation, seek confirmation in the code and consider it an honour to gain a point*; under such circumstances government becomes impossible. (It was only) when the Hea dynasty had fallen into disorder, that the penal code of Yu (the founder of the first dynasty) was made; it was only when the second dynasty Shang had fallen into disorder that the code of T'ang (founder of the second dynasty) was made; it was only when the third dynasty Chow had fallen into disorder that the code of nine punishments was made. The origin of these three codes dates altogether from the time of the middle age (between the flourishing and the downfall of the dynasty). "You are re-editing the three codes, you are casting the penal code in bronze and you seek to quiet the people hereby. Is it not impossible? It is said in an ode, an excellent law is the virtue of Emperor Wen; daily it produces quiet in the four quarters. • That being so, what should we want the laws for? *If once the people know the*



It appears that the legislation of China is not a result of progress as in countries of Western culture, but is a result of decay and disorder.\* The laws were not enacted with the primary object of ensuring justice between man and man, but for the purpose of securing subordination of the ruled to the ruler. This explains why they were punitive and vindictive in their nature, and why all civil matters were left to be dealt with according to local customs. With the maintenance of private rights in civil or industrial questions the State had no concern. Only the family, as a basic unit of the State in the eyes of the Chinese ruler and legislator, was subject to a minute legislation, the motto of which was again subordination of the younger generations of the ruled.

Under these circumstances it is no wonder that the law in China remained always within the province of the State. It did not deeply touch the daily interests of a Chinese commoner, for whom it did not mean the assertion of his individual rights as in the West: it meant for him only subordination to the family, subordination to the clan and subordination to the State, whose interests collided frequently with his. This inherited prejudice against the law could not, of course, be dispelled during the short period of modern Chinese legislation. The latter is even stranger to the Chinese mind than the old law. It is based on principles of Western jurisprudence, which have no roots in the old customs and usages of the country.

Neither the law, nor any legal principles and treaties, have ever had in China any other significance than the infringement of the lawful interests of the population. Therefore, the Chinese have never been able to realise the reasons compelling the foreigners to insist upon the preservation of the fundamental Treaties, and the deep significance which they have in their eyes as acts of an immutable character by force of which rich Settlements and Concessions grew up and millions were vested in China.

And this is true not only for the millions of Chinese forming the real Chinese nation, but also for the selected minority of the ruling Chinese and merchants. Since immemorial times they have enjoyed the privilege to govern and to be governed by their own customs and usages, and every attempt on the part of the modern law and International Treaties to deprive them of this privilege constitutes malice, which is to be strenuously opposed.

The two psychologies find their complete reflection in the so-called "Ming Sung Umbrella Case," which since 1921 has occupied the attention of the Shanghai Mixed Court. The case presents in miniature the whole problem of Sino-foreign relations and the methods which the interested parties apply to solve it.

The Ming Sung  
Umbrella Case,  
1921-1926.

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*grounds for litigation, they will neglect all ceremonies and seek confirmation in the code; they will push litigation to the utmost point, disorders and contentions will multiply, presents and bribes will be the order of the day . . . I have heard the saying that when empires are to perish, they have many laws."*

In his "Doctrine of Mean"—(Ch. XXIX) Confucius endorses these opinions of the worthy minister: "The wise and virtuous prince," says he, "moves and shows thereby the proper way to the empire for ages; he acts and gives thereby laws to the empire for ages; he speaks and furnishes thereby an example to the empire for ages."

\*The code, to which the citations refer, cannot be taken as merely a penal code. It embraced practically the whole subject of legislation, which was known in ancient China under the terms "*ceremonies, music, government and repression of disorder.*" Confucius in his Analects (XVI. 2.) says: "When right principles (*Tao*) prevail in the empire, ceremonies, music, government and repression of disorder proceeds from the Emperor."

The Ming Sung Umbrella Co. was promoted in 1921, at a time when China's national feelings against Japan were running high. Its object was to manufacture umbrellas to compete with the Japanese manufacturers, and a number of prominent Chinese businessmen were invited to take shares. Many became interested in the company at a comparatively late stage when fresh capital was to be procured due to the loss sustained by the enterprise. All usual steps were taken by the promoters to register the concern as a limited company according to Art. 101 of the Commercial Associations Ordinance, which provides that certain documents shall be filed within a specified time with "the competent authorities at the places of principal and branch offices." In this case those documents were filed at the City Magistrate's Yamên at Shanghai. They were in quadruplicate—one for the file of the Magistrate, one for the Provincial Governor, one for the Bureau of Commerce and Agriculture and the remaining copy for the Ministry of Agriculture and Commerce, and it was the duty of the Magistrate to forward these documents to the proper quarters. After that, it was the duty of the Ministry to issue the necessary certificate or to raise any objections they might have. In this case objections were raised, but only to the name, which was said to be as that of another company. Steps were taken to remedy this, but before the certificate was issued the company failed and filed a petition in bankruptcy. The Court, in spite of the fact that, according to Art. 100 of the same Ordinance, the association was competent to commence business, the only requirement being that all shares must have been fully subscribed by the public or promoters, found that the company, having failed to register (Art. 6) was not a limited liability company (*société anonyme*), but an ordinary partnership, in which, as it was alleged, the partners were jointly and severally liable for the whole amount of the debts of the firm.

The extent of this liability of the partners formed the issue of the whole further proceedings. The Court was called upon to fix this extent, as the Chinese shareholders of the company advanced the claim that according to local custom they were only liable in the proportion which the number of shares held by them bore to the total number of shares in the partnership, and that, in the absence of express provision of law, custom was binding.

After due deliberation the Court,\* taking into consideration the Chinese Supreme Court decision of the 7th year of the Republic C.R. No. 10 and No. 37,† decided in favour of this contention, ruling as follows :

"In the absence of express provisions of law, custom is binding.‡ According to the custom of Shanghai, and there is nothing to be found in any law to the contrary effect, each member of a partnership is, even in respect of third parties, only liable for the debts of the partnership in the

Liability of the partners in un-registered concerns.

\*C. C. C. Shanghai Import & Export Co., re. Ming Sung Umbrella Co., Yen Shao et al, before Messrs. Kuan and A. D. Blackburn.

†Decision of January 5th, 1922.

‡Chinese Supreme Court Decisions, Civil Law, Part I. Ch. I. Art. I. : "Civil cases are decided first according to express provisions of law, in the absence of express provisions, then, according to custom, and, in the absence of custom, then according to legal principles."—2nd year A.C. 64.

proportion which the number of shares held by him bears to the total number of shares in the partnership. We would point out that Art. 35 of the Company Law quoted by counsel for the Shanghai Import and Export Co. is not to the point, as this law does not deal with unregistered partnerships.

"We accordingly find that the defendants, other than the first defendant (Ming Sung Umbrella Factory), are only liable in proportion to their shares in the partnership.

"It is clear that the assets of the defendant partnership are not sufficient to meet the partnership debts, and we accordingly direct that the business be wound up and a receiver be appointed for that purpose with special instructions to treat all the so-called shareholders in the defendant factory as members of a co-partnership. We do not now name a receiver, but will make a further order on application."

The existence of the custom, to which the defendants and the Court referred was not at that time disputed by the plaintiffs, while in giving its decision the Court did not go into the consideration of any other earlier Supreme Court decisions, considering the decisions of the 7th year of the Republic (1918) as the final expression of the Supreme Court opinion on the subject.\*

However, in a number of analogous actions the Mixed Court, differently constituted, came to a different conclusion with regard to the liability of the partners in a Chinese unregistered partnership. These decisions† of the Mixed Court were based on some earlier decisions of the Supreme Court, viz: A.C. 292 and 550 of the 3rd year and A.C. 1543 of the 4th year of the Republic‡ taken by the Court as covering completely the point at issue and providing "the best available authority as to how the Chinese law regards the question." §

The question with regard to the existence of the commercial custom of Shanghai defining the extent of liability of the partners and its legal weight in face of the Supreme Court decisions was,

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\*The Supreme Court decisions cited run as follows: (1) "Debts owed by a partnership should be borne by its partners proportionately according to their shares, and, though, if the partners are unknown, claims against them may be made through the channel of the manager, he is not personally liable for the debts."—7th year C.R. No. 10. (2) "A manager, no matter whether he is one of the partners or not, is under a duty to defend actions on behalf of all the partners, but not under any obligation to make payments for them; therefore, if any action is defended by the manager, judgment should be given against the firm and execution levied on the partnership property or the estates of the partners without making the manager liable."—7th year C.R. No. 37.

†F. C. C. Barlow and Co. vs. Mok Kyung-ding, before Messrs. Yui and E. W. Mead, January 5th, 1923.

C. C. C. Yong Oen-long and Co. in liquidation, before Messrs. Yui and E. W. Mead, August 28th, 1923.

C. C. C. Hsien Nyih New World Co. in liquidation, before Messrs. Yui and J. E. Jacobs, May 8th, 1924.

‡The cited decisions read as follows: (1) "Since the Civil Code has not been promulgated, there is yet no express provision governing the liability of partners in respect of the debts of the partnership. But according to the principles of civil law every partner is held to be liable to the creditors of the partnership in proportion to the share he holds. If any partner is insolvent and that is found to be true, the other partners should bear his share of the liability rateably and no creditor may without just cause claim payment of the whole debt against one of the partners, for this is a joint, not a joint and several debt" (A.C. 292); (2) "If the assets of the partnership are insufficient to pay off its debts, every partner is, within the limits of his share, liable to an unlimited extent, and no one can regard his private property as exempt merely by distributing the assets of the partnership among creditors" (A.C. 550); and (3) "In regard to the debts of a partnership, if one of the partners has absconded or become insolvent, the other partner should bear his share of liability. This rule is intended solely for the benefit of the creditor so that he may enforce his entire claim against the solvent partners, but it cannot be taken advantage of by a partner alleging himself insolvent in order to compel the other partners to pay for him, (A.C. 1543).

§F. C. C. Barlow and Co. vs. Mok Kyung-ding before Messrs. Yui and E. W. Mead.



in these decisions, left untouched by the Court. It did not go into the consideration of the legal weight of the Supreme Court decisions, taking it as superior to custom, though, in the decision of the 3rd year A. C. 292, which formed the basis of the Mixed Court decisions, the latter stated itself that "*since the Civil code has not been promulgated*, there is yet no express provision governing the liability of partners in respect of the debts of the partnership. But according to the principles of civil law (*sic*) every partner, etc."

It should be admitted that the latter conception was a typical one for the situation, for it reflected the whole psychology of the Mixed Court, which as we know, since its very inauguration has always been under the influence of the ideas of Western jurisprudence. According to these ideas "the Supreme Court was the highest tribunal of the land, its decisions could be compared to those of the House of Lords or the Judicial Committee of the Privy Council of England,"\* and of course, any local custom could not pretend to be superior to them.

The position taken by the Court with regard to the extent of the liability of the partners in an unlimited partnership conformed also to the respective provisions of the Western laws, and solved effectively the complicated question of recovering debts from Chinese firms whose members, under present circumstances in China, could find an easy way to evade the payment of their liabilities. But this change in the practice of the Mixed Court could hardly pretend to correspond to the traditional idea of Chinese businessmen concerning the methods of settlement of debts of an insolvent Chinese firm.† It became a subject of lively discussion and vigorous protest on the part of the Shanghai Chinese General Chamber of Commerce and different guilds, in whose opinion "the laws were sometimes entirely contrary to the ideas of the people," who "always adhered to their own sphere of action."‡

Meanwhile, the original Court's order had been complied with by the partners of the Ming Sung Umbrella Co., who had paid their *pro rata* shares as directed by the Court leaving an unpaid balance of about \$20,000.

However, in November, 1925, Messrs. Teesdale, Newman & McDonald, of Shanghai, acting on behalf of Messrs. Barlow & Co., O. H. Blackburn, and Frederick Large & Co., British firms trading in Shanghai, moved the Court to direct the partners of the defendant company present in Shanghai to appear in person in Court to show cause why they should not be ordered to pay the balance of the company's indebtedness. In answer to this summons only three partners of the company out of the original 233 appeared in Court. The remainder had either died or left the jurisdiction of the Mixed Court, or their whereabouts were unknown. These three partners were all leading members of the Chinese mercantile community in Shanghai.

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\*F. T. Cheng, LL.D. (Lond.) Preface to the First Edition; The Chinese Supreme Court Decisions, Peking, 1923.

†"If a party alleges certain customs and the Court finds that they exist and are valid according to law, they shall be applied to the exclusion of ordinary principles" S.C.D., 4th Year A.C. 2354.

‡Statement of the Director of the Committee of the Bean and Rice Guild, at the trial of the Ming Sung Umbrella Case before Messrs. Kuan and A. J. Martin, March 17th, 1926.

Mr. A. M. Preston, of Messrs. Ellis & Hays, of Shanghai, advanced on their behalf the plea that according to the exact wording of the Mixed Court decision of January 5th, 1922, and the existing local custom the defendants could not be made liable to any further extent for the outstanding debts of the company. This contention was very strenuously opposed by Mr. K. E. Newman on behalf of the foreign creditors, and the Court,\* in view of the importance of the issue raised by the parties, expressed itself prepared to hear any evidence and argument on the subject which might elucidate the disputed point.

Pursuant to this order Mr. A. M. Preston called, on behalf of his Chinese clients, seventeen witnesses to give testimony to establish the existence of a custom, which, as stated above, exonerated the defendants from any further liability. All these witnesses were respectable Chinese gentlemen, directors of various Chinese guilds, with large experience and high personal and financial qualifications, which excluded any possibility of their being insincere or materially interested in the issue of the case. Their statements were, in the main, identical and could not be shaken in cross-examination by Mr. R. G. McDonald, of Messrs. Teesdale, Newman & McDonald, representing the foreign plaintiffs.

Evidence of expert witnesses re existence of local custom.

In order to give an idea of the proceedings, we permit ourselves to cite in brief, the most typical evidence given by two of these witnesses—the Chairman of the Shantung Guild in Shanghai and the Chairman of the Shanghai Cotton Yarn Guild.

The Chairman of the Shantung Guild stated that he had been in business in Shanghai for over 40 years and knew the local business customs. With regard to the custom relating to the liability of partners in a firm, this liability was always divided according to the number of the shares of the partners. If he had a share of Tls. 10,000, he would have to pay out the whole of that amount "to save face." If there were four partners, and two ran away, that would be a question for the manager to take up.

"If I pay my share of the loss," said the witness, "I do not care what happens to the others."

In conclusion the witness expressed the opinion that the custom with regard to liability of partners applied to the whole of China.

The Chairman of the Cotton Yarn Guild stated that he had been in business locally for 31 years and that according to his experience there was always the custom upheld in his guild that solvent partners were only responsible for any losses in a partnership *pro rata* to their shares. They were not responsible for any partners who ran away.

Definition of custom according to Chinese law.

The Chinese "Law Present in Force" and the practice of the old and modern Chinese courts do not contain any provision and do not furnish any precedents regarding the method of establishing a custom. As far as the definition of a custom and its validity are concerned the Chinese Supreme Court, in its decisions of the 2nd Year A. C. 3 and the 6th Year of the Republic A. C. 1422, gives four essentials, the absence of which makes the custom invalid: (1) It must have been observed by people generally and from time immemorial. (2) It must have been repeatedly observed by

\*Messrs. Kuan and A. J. Martin.

people as law ; (3) the matter it concerns must be one for which there is no express provision ; and (4) it must not be contrary to public policy or interest.

Thus, neither the method of establishing the custom in question applied by the Chinese parties to the action, nor the custom as established in Court, were contrary to the principles expressed by the highest judicial institution in the country.

In refutation of the allegations of the Chinese parties, Mr. R. G. McDonald, representing the foreign firms, submitted the evidence of the Chinese witnesses to a very detailed scrutiny. In the course of his address to the Court, Mr. McDonald stated that the issue was of profound importance to the business community, not only in Shanghai, but throughout China, and not merely to foreigners, but to the Chinese as well. The evidence given by the witnesses disclosed only one point—that there is such a custom, but it failed to establish the extent of this custom. It should be called not a custom but possibly a loose understanding, merely among the Chinese themselves. It might also be by the natural Chinese characteristic of compromise in matters where partnership losses are incurred. Furthermore the Chinese evidence could not shake the evidence of the foreign witness\* whom the plaintiffs called to rebut the statements of the Chinese and who stated that there is no such custom in Shanghai.

As far as the question of the validity of the custom or trade usage was concerned, Mr. McDonald referred to Lord Halsbury's standard work "The Laws of England," which in the absence of any Chinese legal authority could, in his opinion, serve, in question of doubt, as a guide to the Court in cases where fundamental principles were at stake and where the Law was not clear, just as the British courts paid attention to the American and other decisions under similar circumstances.

The laws of England as well as the practice of English courts contain ample provisions and precedents in respect to the definition of custom and trade usage. It is beyond any doubt that England possesses in that respect the most complete theory in Europe, and the reference to it was perfectly justified by virtue of the principle expressed in the Chinese Supreme Court decision of the 2nd year of the Republic, A. C. No. 64.

According to the English law, a custom is a particular rule which has existed either actually or presumptively from time immemorial and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm.†

Definition of a custom according to English law.

\*Mr. T. Griffin, of Messrs. Seth, Mancell & McLure, Official Mixed Court Accountants. Mr. T. Griffin stated that his firm had had most extensive dealings in Chinese partnerships, particularly with those which had gone into liquidation—probably more than any other firm in China. He did not know any custom limiting the liability of partners in a partnership. In one or two cases of partnership in liquidation the full amount of the loss had been obtained from one or two out of the whole of the partners.

†*Tanistry Case* (1608), Dav. Jr. 29, at pp. 31, 32, where it is said that custom in the intendment of law is such a usage as has obtained *vim legis*, as is, in truth, a binding law as regards the particular place, persons, and things which it concerns.

*Lockwood vs. Wood* (1844), 6 Q.B. 50. Ex. Ch., per Tindal, C.J. p. 64. "A custom . . . is, in effect, the common law within that place to which it extends, although contrary to the general law of the realm."

Halsbury, "The Laws of England," Vol. X., p. 218.



As far as the essential characteristics of custom are concerned, a custom to be valid must have, according to English law, four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin; and, fourthly, it must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.\*

Thus the definition of a custom according to the English law contains the same elements as the principle expressed by the Chinese Supreme Court. However, it contains a far more extensive provision in regard to the requirement of "reasonableness" for a custom to be valid. The general meaning of reasonableness, of course, is far larger than that of "public policy or interest" stipulated by the Chinese Supreme Court.

Foreign conten-  
tion re Custom.

The contention of the foreign plaintiffs represented by Mr. McDonald was that according to English law the custom or usage as set up by the Chinese defendants was not a custom or usage, because, first, it was not proved that it had existed from time immemorial; second, it was not confined to a limited locality; third, it was not reasonable; fourth, it was not certain. And further, it was not a usage, because it was not notorious, it was not certain; it was not reasonable; it was not legal; and lastly, the foreign plaintiffs, even if it was held to be a recognized usage, were not bound by it because they were ignorant of its existence.

The custom or usage which was set up before the Mixed Court *was unreasonable because it was contrary to the law of other countries* and it would and must alter the whole method of dealings between foreigners and Chinese. It was wholly unreasonable as regards foreigners and would in case of its recognition inevitably lead to a serious loss of confidence in the Chinese in the future. It would put a premium on forgery and dishonesty whenever things went wrong or whenever there was a question of liquidation.

What was the object of having limited liability companies and limited partnerships registered, except to allow people dealing with them to know the full facts in the first place and to prevent dishonesty and forgery in the second? If such a custom, as alleged, was to be sanctioned by the Mixed Court it must lead to a tremendous contraction of credit and must therefore deal a staggering blow at the business of Shanghai. This is contrary to the law of every foreign country in the world which makes provisions for limited companies and limited partnerships.

Chinese conten-  
tion re Custom.

These arguments had all the appearance of irresistible logic, but it should be recognized that the evidence put forward by the Chinese in support of their allegation complied in many respects with the minute requirements of the English law. The remoteness and certainty of the alleged custom was further supported by Mr. A. M. Preston, on behalf of the Chinese parties, by producing a copy of the "Journal of the Chinese Branch of the Royal Asiatic Society," Vol. XXII, dated as far back as 1887, in which a detailed report was

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\**Tyson vs. Smith* (1838), 9 Ad. & El. 406, Ex. Ch., per Tindal, C.J. at p. 241 *ibid* p. 222.

published concerning a special meeting of the Society devoted to the discussion of the existence of this custom in China.\* Mr. Preston cited also Mr. Geo Jamieson's work "Chinese Family and Commercial Law," the work of Jernigan "China in Law and Commerce," which referred directly to the existence of this custom,† and finally he produced the Hongkong Ordinance No. 35 of 1911, which was accepted by the Court as evidence and which recognized the existence of the custom at issue, being described as "an Ordinance to give effect to certain Chinese partnership customs."‡

As far as the Chinese were concerned the arguments of the foreign party could hardly impress them very deeply. The allusions to the inconvenience which the foreign merchants might experience in dealing with the Chinese, the loss of confidence, the conflict of the custom with the foreign laws, and, finally, the non-obligation of the foreigners to know the Chinese customs, could not appeal to their mind. The alleged custom was far from being in the Chinese belief "unreasonable." It corresponded entirely to "public policy and interest" in China for the last decades, as it was understood by the Chinese, while the non-obligation of the foreigners trading in China to know Chinese custom was very questionable. The fundamental Treaties between China and foreign countries provide specifically that in case of any litigation between a foreigner and a Chinese, both are to be dealt with according to the laws of their countries. If the law of China recognizes a custom as binding upon her citizens it is this custom which must be applied with no regard to the laws of the country of the foreign party to the action.

Thus the whole issue before the Court came finally to the question of whether the alleged custom of limited liability of partners in a Chinese partnership was in face of the existing decisions of the Chinese Supreme Court binding upon the parties concerned, or,

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\*On November 18th, 1887, at the meeting of the N. C. B. R. A. S. at Shanghai, a paper was read entitled "Chinese Partnerships: Liability of Individual Members." It is described in the summary of proceedings as "a series of short papers contributed by various members in reply to a proposition regarding the subject made by Mr. Geo Jamieson, 'the well known author and recognized authority on Chinese law. This proposition was in the following terms: 'A, B. and C. enter into partnership. A. contributes Tls. 500, B. contributes Tls. 1,000 and C. Tls. 2,000 of capital, which may thus be regarded as consisting of 7 shares, of which A. holds 1, B. holds 2, and C. holds 4. After a time the firm fails, with debts to the amount of Tls. 5,000, and at the same time C. absconds.—To what extent and in what proportion will A. and B. according to Chinese mercantile law or custom, be required to make good the debts?' Opinions were given by Messrs. C. T. Gardiner, H.B.M.'s Consul at Hankow, Byron Brennan, H.B.M.'s Consul at Tientsin, E. H. Parker, H.B.M.'s Consular Service, Shanghai, H. A. Giles, H.B.M.'s Consul, Tamsui, C. Alabaster, H.B.M.'s Consul, Canton, P. G. von Moellendorff, Tientsin, the Rev. J. MacIntyre, Newchwang, Su Fu-sheng, Shanghai, and an anonymous Chinese official, all "persons distinguished for their intimate acquaintance with Chinese affairs."

†G. Jamieson, "Chinese Family and Commercial Law," 1919, p. 128., Jernigan, "China in Law and Commerce," p. 94.

‡In the preamble of the Ordinance No. 35, 1911, it was stated that "Chinese merchants in Hongkong had long complained that the British law of partnership was unduly harsh in making every partner responsible for the whole debts of the firm, however small his interest in the concern might be. This, it was alleged, had given rise to a practice of concealing the true names of the responsible parties by means of fictitious partnership deeds and other deeds so as to evade liability," etc.

In the introductory statement presented to the Legislative Council at Hongkong when the Bill was read by Mr. C. Alabaster, to the presentation of which Mr. R. G. MacDonald raised objection, it is stated *inter alia* as follows: "The present partnership Law codified in Ordinance No. 1 of 1897 is habitually evaded by respectable and responsible members of the Chinese mercantile community because it runs counter to the essential characteristics of Chinese partnerships." . . . And further in respect to the chief characteristics of a Chinese partnership:—" (1) each partner is liable to pay out of his private property only such proportion of a partnership debt as his share bears to the total of the shares of all the partners." . . .

as inferior to the latter, must it give way to the Supreme Court's decisions. And furthermore, have the decisions of the Supreme Court, as interpretations of the law of the country, the force of a law referred to in the decision of the Supreme Court of the 2nd year of the Republic A.C. 64 (Art. 1 of the Chinese Supreme Court Decisions, translated by Dr. F. T. Cheng and published by the Commission on Extraterritoriality in Peking, 1923), or were these decisions only legal principles inferior to the customs?

All the efforts of the parties were concentrated on this particular point, and the latter revealed once more the complete divergency of the opinions of foreigners and Chinese on the construction of law.

Foreign view  
point on the legal  
value of Chinese  
Supreme Court  
decisions.

As a matter of fact, the Chinese Supreme Court at Peking could only in the eyes of the foreigners be the highest judicial authority in China, whose interpretation of the law was as binding\* as the decisions of the House of Lords, the Judicial Committee of the Privy Council of England, the Imperial Senate in Russia prior to the Great Revolution, etc., decisions which formed an integral part of the legal systems of these countries. The authority of these decisions was unquestionable, and no foreigner could, for a single moment, suppose that a public body could accept its authority subject to the *proviso* that its decisions suited their views.†

Mr. McDonald submitted the Chinese law in force to a very minute scrutiny in order to establish its spirit and to show that the decisions of the Supreme Court were nothing less than the interpretation of this law. In the first place he referred to the Commercial Associations Ordinance, promulgated in 1914. According to the provisions of this Ordinance a partnership cannot enjoy the advantages of a limited liability company, which this Ordinance purports to confer. The partners in a partnership cannot be in a better position than shareholders of an unlimited company. If in such a company the total resources are insufficient to cover the losses, the shareholders shall be responsible for the excess liabilities‡. The whole object of the Commercial Associations Ordinance is to confer the benefit of a limited liability upon companies which conformed to the requirements of the said ordinance. Otherwise it stands to reason that they were left with their liability unlimited. If there is any law in force in China, this is in force. The Supreme Court decisions and the Mixed Court decisions if taken chronologically in the vast majority are in favour of this contention, except the

\*Decision: No. 896, November 7th, year (Peking), No. 944 March 8th year (Huachu) No. 975, April 8th year (Chi-hua).

†Statement of Mr. Yee Vee-chang, the Director of the Rice Merchants Guild, before the Mixed Court on March 16th, 1926:

Mr. McDonald to the witness:—But do you respect your own Supreme Court at Peking or do you not? Witness:—Of course, being a Chinese organization, we must respect it, but suppose any decision passed by the Supreme Court is not good then we merchants have no capability of modifying it. Mr. McDonald:—But are you going to suggest that you are in a better position to decide whether a judgment of the Supreme Court composed of some of the ablest men in China is right or wrong? Witness:—That is not so. We merchants usually do as adopted by all the merchants. Mr. McDonald:—Do you obey the judgment or decisions of your own Supreme Court or do you not? Witness:—If it is reasonable I will obey; if it is not, I will not obey. Mr. McDonald:—Then you make yourself the final arbiter? Witness:—Not I alone. Mr. McDonald:—I mean the merchant classes. "What we say is right, what the Supreme Court says is wrong, even on a matter of law"? Witness:—That is so.

‡Commercial Associations Ordinance, Art. 35.



Mixed Court decision of January 5th, 1922, rendered by Messrs. Kuan and A. D. Blackburn and based on the 7th year C.R. No. 10 and No. 37.

Analysing a number of Supreme Court decisions\* Mr. McDonald traced the same idea—the spirit of the Chinese civil law—in all these decisions, which in Art. 6 of China's Corporation Regulations† requires a corporation to be registered in order to be allowed to bring suit against a third party. Consequently, a firm having not really complied with these legal requirements should still be treated as a partnership and its shareholders should be severally (not jointly) and unlimitedly liable according to the usual custom of the partnership.

As far as the decision of Messrs. Kuan and A. D. Blackburn was concerned, based on the decisions of the Supreme Court of the 7th year C. R. No. 10 and No. 35,‡ and local custom, Mr. McDonald submitted that it was a result of a misunderstanding owing to the fact that the Court's attention was not drawn to the Supreme Court decisions, which he cited, particularly as the decisions C.R. No. 10 and No. 37 dealt primarily with the liability of managers in a partnership. The local custom was, in his opinion, not investigated with essential thoroughness as had been done in the present case. Anyhow, if such a custom existed, it existed between the Chinese but not between the Chinese and foreigners§ and, therefore, cannot form the basis of any relations between them.

\* (1) "If the assets of the partnership are insufficient to pay off the debts of the partnership, the deficit should be made good by the partners at the rate at which losses should be divided."—3rd year A.C. 222.

(2) "Since the Civil Code has not been promulgated, there is yet no express provision governing the liability of partners in respect of the debts of the partnership. But, according to the principles of civil law, every partner is liable to the creditors of the partnership in proportion to the share he holds. If any partner is insolvent, and that is found to be true, the other partner should bear his share of the liability rateably and no creditor may, without just cause, claim payment of the whole debt against one of the partners, for this is a joint, and not a several debt."—3rd year A.C. 292.

(3) "If the assets of the partnership are insufficient to pay off its debts every partner is, within the limits of his share, liable to an unlimited extent, and no one can regard his private property as exempt merely by distributing the assets of the partnership among the creditors."—3rd year A.C. 550.

(4) "In regard to the debts of a partnership, if one of the partners has absconded or become insolvent, the other partner should bear his share of the liability. This rule is intended solely for the benefit of the creditor so that he may enforce his entire claim against the insolvent partners, but it cannot be taken advantage of by a partner by alleging himself insolvent in order to compel the other partners to pay for him."—4th year A.C. 1542.

(5) "The debts of the partnership should be discharged first with the assets of the partnership. When there is a deficit it should be made good by the partners rateably according to the shares they hold; therefore a creditor cannot enforce his whole claim against a partner without proving that the others are insolvent."—4th year A.C. 2041.

(6) "Partnership debts should, in principle, be borne rateably by the partners according to the shares they hold, and it is immaterial whether the creditor knows of it or not. But the subject of the debt must be attributable to the entire body of partners before that principle is applicable. If the debt is incurred in the name of only one of the partners or his firm, such debt, since he alone is subject of it, should be discharged by him, no matter whether or not it has in fact been incurred for the partnership."—4th year A.C. 2232.

† Commercial Associations Ordinance, Art. 6.

‡ "Debts owed by a partnership should be borne by its partners proportionately according to their shares, and though, if the partners are unknown, claims against them may be made through the channel of the manager, he is not personally liable for the debts."—7th year C.R. No. 10.

§ "A manager, no matter whether he is one of the partners or not, is under a duty to defend actions on behalf of all the partners, but not under any obligation make payments for them; therefore, if any action is defended by the manager, judgment should be given against the firm and execution levied on the partnership property or the estates of the partners without making the manager liable."—7th year C.R. No. 37.

§ Mr. McDonald analysed also all the decisions of the Mixed Court given subsequently to the decision of Messrs. Kuan and Blackburn, which were entirely

Chinese view  
point on the  
legal value of the  
Chinese Supreme  
Court decisions.

The contention of the Chinese party was far more simple. It did not descend, as might have been expected, into the depths of legal analysis of the issue, being confined to the exact wording of the Chinese law and the Supreme Court decision of the 2nd year No. 64 (Art. 1. Chinese Supreme Court Decisions, in the publication of the Extraterritoriality Commission, Peking, 1923) in the interpretation of the Chinese themselves. It should be recognised that Mr. A. M. Preston, acting on behalf of the Chinese defendants and on their instructions, presented the case with the utmost simplicity, carefully avoiding any resort to compound legal constructions strange to the mind of his constituents.

*"Civil cases are decided first according to express provision of law, then according to custom, and, in the absence of custom, then according to legal principles."*

"This fundamental principle of the Chinese legal system," said Mr. A. M. Preston, "was carried still further by case No. 1090 of the 3rd year which reads: '*All commercial acts are governed by custom in the absence of a special agreement, and, in the absence of custom, by legal principles.*'"

There is no express Law governing the case before the Court, unless it be the old law of the Tsing Dynasty—"Law Present in Force." There is a custom in Shanghai, and probably elsewhere, and since there is a custom, legal principles do not and cannot come into operation. The Civil Code has not been promulgated and, therefore, does not apply. The Commercial Associations Ordinance, as dealing only with limited and unlimited companies and not with the customary form of Chinese partnerships, does not apply.

In the introduction to the Supreme Court Decisions, in a publication sanctioned by the Supreme Court itself, it is stated:—

The following pages contain the principles applied by the Supreme Court in its decisions since the first year of the Republic.

Moreover, as the Civil Code of China has not yet been promulgated and the civil provisions saved from the criminal code of the Tsing Dynasty are too few and too rudimentary to meet the necessities of the time, what is contained in the following pages . . . forms the unwritten Law of China in the judicial sense of this term. This unwritten Law of China is only of recent growth for it is a product of the Republic of China, which has not yet reached its teens.

The State took little interest in civil disputes. The people, too, did not like to go to Law. Their disputes were often settled . . . in the Chambers of Commerce or Guilds in the case of city-men.

As to the sources of the principles embodied in this volume the reader will probably find that many of them bear traces of Western jurisprudence.

Western jurisprudence has been the fruitful field from which those principles have been gathered, and, indeed, most of our judges have been brought up in Western jurisprudence. . .

*This book consists of principles extracted from judgments delivered by the Supreme Court from the first year of the Republic, when the Supreme Court was reorganized to the end of the seventh year.*

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In line with the Supreme Court decisions, and which as the latest decisions on the point, should have been taken as the final opinion of the Mixed Court on the subject. As far as Jamieson's "Chinese Family and Commercial Law" cited by Mr. A. M. Preston was concerned, Mr. McDonald submitted that it should entirely be disregarded because no authorities were cited in support of the views put forward.—AUTHOR.

In fact, this is a very clear admission of the origin of many of the principles laid down at the foundation of the decisions of the Supreme Court, which made them strange to the traditional Chinese life and inferior to the centuries' old customs, and which explained their criticism on the part of the Chinese.

"It may perhaps be mentioned," it is stated in the same introduction, "that the Supreme Court is in its infancy. . . it did not really begin to work until China became a Republic."

"How far the Supreme Court has exercised this function in a way worthy of its name will be judged by its work, and, for this reason, criticisms of this volume are welcome."

"The Supreme Court cannot make Law," continued Mr. A. M. Preston, "it can only administer and interpret it. The legislative power of the Republic is exercised either by the National Council\* or by the Parliament."† Therefore, it was entirely unjustifiable to attribute to the Supreme Court decisions the importance of a law except in cases specially provided in the Constitution of the Supreme Court.‡ The modern practice of the Mixed Court based on its decisions without due regard to local custom, or in spite of it, were without legal foundation. They could not form a precedent or interrupt the exercise of the custom. The old practice of the Court§ recognized the custom and sustained it, and if the decisions of the Supreme Court had less value than customs, then the establishment of a custom must override every case which was solely based on Supreme Court decisions.

It should be admitted that the logic of the Chinese contention was not less irresistible than that of the foreign party to the action. Both were practically the result of the same logical construction viewed only from entirely different standpoints. And it was impossible without impairing the truth to deny one and establish the other. It was a logical deadlock, to which the Court was driven by its very constitution based on a compromise between the Chinese and Western principles of jurisprudence.

The problem before the Mixed Court appears to be still more difficult if one takes into consideration that its Bench is composed of two co-judges, whose psychologies are identical to those of the parties who presented their cases and waited for an equitable judgment.

It is wholly immaterial what judgment will finally be handed down by Messrs. Kuan and A. J. Martin, the two co-judges occupying the Bench in the Ming Sung Umbrella Case. It will be immaterial if the learned Magistrate and the Assessor disagree and are unable to render any decision at all, for any judgment in this case will mean a compromise unable to satisfy the parties, as has been the case of

\*The Provisional Constitution of the Republic of China, March 11th, 1911, Art. 16.

†The Permanent Constitution of the Republic of China, October 10th, 1923, Art. 39.

‡Supreme Court Decisions No. 896, November 7th, year (Peking); No. 105, March 3rd, year (Chung-ting); No. 523, November 5th year (Anhwei).

§Case Guerrier vs. Wang Tao-ming, March 31st, 1904.

Case Wattle vs. Pao Kong, March 9th, 1912.

Case Ho Chin-shi, Liquidator of the Hung Yuan Bank, vs. San Yung-lai et al., January 13th, 1916.



any compromise between foreigners and Chinese during the past ten years.\*

The time for compromise between Chinese and foreign points of view, which helped in the past to reconcile the divergent Western and Chinese cultures, has irrevocably passed.

Under the influence of Western principles the somewhat deliquescent Chinese national idea assumed the form of ultra-nationalism, which the foreigners have now either to recognise in full, renouncing in its favour their treaty privileges, or denounce it *en bloc* imposing upon China such terms as, in their opinion, may ensure her progress and her commercial and political relations with the Treaty Powers and their interests.—

*“Tertium non datur.”*

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\*Just at the time when this monograph went to press Messrs. Kuan and A. J. Martin, announced on July 23rd, 1926, their decisions.

As it might have been expected they could not agree on the issue, and, while the Chinese Magistrate upheld the Chinese point of view and confirmed his previous decision given concurrently with Mr. A. D. Blackburn on January 5th, 1922, the foreign Assessor expressed himself entirely in favour of the foreign conception.—  
AUTHOR.

## PART II.





## CHAPTER I.

### THE OPIUM PROBLEM AT SHANGHAI.

MUNICIPAL COUNCIL, 1906-1914.\*

The close of the year 1906 proved to be momentous in the history of China for the reason that it saw a revived attempt on the part of the Chinese Imperial Government to check the widespread evil of opium-smoking, a habit unanimously denounced by all right-thinking Chinese.

Prohibition of  
Opium in China,  
1906.

For the sake of justice, it should be said that whilst the late Imperial dynasty can be accused of many offences against the Chinese nation, it can hardly be accused of helping to spread the use of the drug throughout China. It was not the fault of the Chinese Emperors that all earlier attempts to check the evil had failed on account of the general corruption of the powerful mandarin and the apathy and unwillingness of their subjects to obey the Imperial commands.†

The agitation of 1881 in England‡ and America against the opium trade in connection with tariff reform, which resulted principally in the increase of revenue from imported opium, once more drew the attention of the world to the opium problem and gave moral support to Young China to insist upon the introduction of much needed reforms.§

The anti-opium agitation swept the country and the Imperial Government took action with a fair prospect of receiving from the nation that moral support which previously had been lacking.

"Since the restriction against opium was raised," runs the Imperial Edict, "the poison has spread over China well-nigh to overflowing. The time of the smoker is wasted, his life lost, his body diseased, his family ruined. The apparent poverty and weakness of the people during a few years is in truth to be traced to this, whereof the mere mention excites indignation. There is an intense determination on the part of the Throne to render the country powerful, and it is thus of extreme impor-

Imperial Edict of  
November 21st,  
1906.

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\*The author intended to include these three chapters relating to the opium problem at Shanghai in the first publication "Shanghai: Its Mixed Court and Council," but in view of their specific contents it was decided not to overcharge the main subject of the first publication, and to give them as supplementary chapters to this second publication.—AUTHOR.

†Emperor Yungcheng's first anti-opium Edict, 1726; Emperor Kiating's Edict, 1800; Emperor Taokwang's Hsun-tsung Cheng Hwang-te Edict, 1838, and Emperor Hienfeng's Edict, 1850.

‡In connection with this agitation there is a noteworthy letter of the late Li Hung-chang to Mr. F. S. Turner, Secretary of the Anglo-Oriental Society for the Suppression of the Opium Trade, May 24th, 1881, U. S. For. Rel. 1883, p. 128, expressing the views which animated the Chinese public in respect to the opium trade:—"Opium is a subject in the discussion of which England and China can never meet on common ground; China views the whole question from a moral standpoint, England from a fiscal." And further:—"The single aim of the government in taxing opium will be in future, as it has always been in the past, to repress the traffic, never the desire to gain revenue from such a source. Having failed to kill a serpent, who would be so rash as to nurse it in his bosom?"

§In 1903 the Chinese students in America protested against the exhibition of Chinese opium-smoking paraphernalia at the Louisiana Purchase Exhibition at St. Louis, and Prince Pulun, the Chinese Imperial Commissioner, acceded to their wish. At the same time the Chinese students in Japan and those brought up under the influence of foreign missionaries in China established numerous unions, through which they inundated the country with the most lively anti-opium propaganda.—H. B. Morse, *The International Relations of the Chinese Empire*, Period of Submission, Ch. XXIX. para 11.

tance that the people should again be warned to rouse itself in order to be rid of this wasting malady and regain health.

"It is therefore commanded that a limit of ten years be set within which the evil wrought by the foreign and native drug should uniformly and entirely be stopped, and the Ministry of the Interior is enjoined to arrange suitable regulations as to the manner in which its consumption, and the cultivation of the poppy, is rigidly to be prohibited and to memorialize accordingly. Such is the Imperial Decree."\*

In response to the Imperial command the Ministry of Interior at Peking presented ten articles for the perusal of the Emperor, which form the body of China's present anti-opium legislation. These ten articles specified are as follows:†

Regulations memorialized by the Ministry of the Interior as to the prohibition of opium, 1906.

(I). *Limit of time for the cultivation of the poppy with a view to entirely uprooting the practice.*

The greatest injury results from the cultivation of this plant, and the provinces in China where its production is most plentiful, are Szechuen, Shensi, Kansu, Yunnan, Kueichow, Shansi and Kianghuai. It is produced also in all the other provinces. A limit of ten years is now fixed within which the consumption of opium is to be prohibited, and it is therefore clearly necessary that a limit should be fixed within which also the cultivation of the poppy must cease. All Viceroys and Governors shall direct departmental and local authorities to investigate as to the total number of *mow* of land hitherto under poppy cultivation within their jurisdiction and shall make a report thereon. All land which has not hitherto been planted with poppy shall remain clear, and land which is already planted shall be covered by a certificate, the land-holder receiving orders annually to lessen the amount cultivated by one-ninth, and to cultivate one or another cereal in its stead with due regard for the character of the ground. The latter point shall be the subject of constant investigation by magistrates of departments and districts, and the certificate shall be changed once annually, a uniform limit of nine years being fixed within which the plant shall be eliminated. In the event of non-compliance the land shall be confiscated, and upon establishment of the fact, that within any district the sowing of cereals has been substituted for the poppy to the extent of all the land under cultivation, local officials may be recommended for reward.

(II). *Issue of licenses with a view to preventing opium smoking.*

Owing to the fact that the opium poison has been spreading for many years—about 30 or 40 per cent. of the people make use of it. In enforcing the prohibition it is therefore necessary to treat with leniency those who already practice the habit, and with severity those who practice it in future. Directions shall be given to the local officials, and gentlefolk, graduates, under-graduates and students of each province to be the first to break off the practice as an example to the common people. All consumers of opium, whether gentlefolk or common people together with their entire family of female dependants, shall in every case proceed to the Court of the local official to report themselves either in their native place or in the place where they are staying. If their place of residence is a considerable distance from a *yamen* or police bureau, the notables of the place in question may report collectively on their behalf.

Before the time limit local officials shall issue a proclamation and a form, and consumers of opium shall insert their names and ages thereon, with their places of residence and occupation and the amount of opium, they consume each day. These details shall be entered upon the form, and a limit proportionate to the distance of the locality must be set, wherein these reports shall be made. When the report has been com-

\*Translation from the "Sin Wan Pao," November 23rd, 1906. Municipal Council's Report, 1907.

†"Universal Gazette," December 2nd and 3rd, 1906.

pleted, it shall be embodied in a register, and the portion thereof shall be copied and presented to the superior *yamen* for record and inspection.

Licenses shall also be printed, whereon an official stamp shall be affixed. One of these shall be issued to each receiver of opium, and they shall be of two kinds. License A. shall be issued to consumers of over 60 years of age, License B. shall be issued to those under 60 years of age. Those who have first received License B. may not when they arrive at the age of 60 then receive License A. The man's name, age and residence shall be inserted in the license with the amount of opium he consumes daily and the date of issue, to serve as a proof in purchasing the drug. Secret purchase and consumption without license will result in punishment. After the first inspection of the register no further applications for license shall be granted to consumers. The prohibition thus defined shall be strictly observed.

(III). *With a view to getting rid of this malady, a time limit shall be fixed within which the craving is to be cured.*

After the issue of licenses, with the exception of persons over 60 years of age, i.e. recipients of License A, whose strength and energy are impaired and who will be treated with leniency, all consumers shall diminish the amount of opium consumed, by the proportion of 20 or 30 per cent. yearly, and within a few years must one and all break off the habit. Those who have broken off the habit, shall present at the *yamen* of the local official, a bond entered into by their fellow townsmen, after inspection of which the persons named shall be struck out from the register, the licenses shall be handed in and the names of such persons shall be reported periodically to the superior *yamen* for record. The limit of time thus laid down is wide, and if there remain persons who have not broken off the habit after its expiry, their conduct is then wilfully self-indulgent and vicious, and they are to be warned of the punishment which will ensue. Persons receiving License B who after expiry of the time limit, have not broken off the habit, if officials, shall be deprived of their ranks, if doctors or licentiates, of their degree, or if common people, shall be registered as confirmed opium smokers. Of these a further register will be opened in the various districts and departments and the names will be given to the superior for record; whereafter posters, for the information of the public, indicating the names and ages of such persons, will be exhibited along main routes and in the towns or villages where they reside. In no local gatherings or public festivity or matter of public repute, may these persons take part, that it may thus be shown that they are not of a standing equal to that of ordinary people.

(IV). *With a view to clearing the country of this vice, opium houses shall be prohibited.*

At this period when the time limit has not expired it is manifestly difficult to put rules into effect against shops selling the drug. Opium houses, with lamps however, are establishments whereto youths and young men are constantly enticed, together with unemployed persons who congregate there, and the evil which results therefrom is especially great. Local officials should take preventive steps accordingly, fixing a period of six months within which all are to close, and their proprietors enter into other business and in cases where the limit is exceeded, official censure shall invariably follow. Eating houses and wine shops moreover are not to be permitted to serve opium to their customers, nor are customers who frequent them allowed to use their own pipes and consume their own opium. Disobedience in this respect shall be visited with severity. A limit, moreover, of six months shall be fixed for the closing of shops which store opium scales, opium lamps and opium paraphernalia. A limit of three months shall be fixed wherein the collection of all opium lamp taxes must cease universally.

(V). *With a view to aiding investigation, opium shops shall be registered.*

Although it is impossible to prohibit all shops simultaneously, orders shall be given for their gradual reduction and cessation, and the opening of new shops is not permissible. Local officials in every city, town, village and hamlet must discover the total number of shops wherein



the raw or prepared product is sold, and shall enter them in a register for record, whereafter a certificate shall be issued by the officials in question as a license for the carrying on of the trade, and after this general investigation, new shops shall not be permitted. An examination of the consumers, license must take place in every case where customers purchase the prepared product, before sale to such persons is permitted. To persons who are not holders of such licenses, sale is not permitted. At the end of each year the quantity of the raw or prepared product sold in the year must be reported to the local officials for registration, so that for purposes of comparison the amount sold by shops in each district can be observed, together with the reduction thereof. Within a limit of 10 years the sale must cease and in case of non-compliance the premises shall be officially sealed, the goods confiscated, and the punishment doubled. Establishments which close in due course shall present their certificates for cancellation and shall not be permitted to retain them.

(VI). *Official preparation of anti-opium prescriptions.*

Since anti-opium prescriptions are in general and extensive use, a skilled doctor should be chosen in each province to investigate as to their ingredients with a view to choosing for use those which are best suited to climatic conditions. Anti-opium medicine should then be prepared, and it is important that there should be no intermixture of opium, opium ashes or morphia. After these have been prepared all departmental and district officials should take them over at a suitable price, and distribute them to the charitable institutions or drug shops of the locality, where they will be sold at the original price, and poor people without means are permitted to receive them without payment. Local notables and merchants are also permitted to manufacture and distribute these medicines in order to spread their use, while those who distribute by individual effort in order to assist consumers, and who therefore give real aid to the cause of anti-opium, may receive special reward from the officials.

(VII). *Approval of the establishment of anti-opium societies for the extension of the propaganda on charitable lines.*

Various energetic persons have recently co-operated in the establishment of charitable anti-opium societies for mutual aid. This action is highly praiseworthy, and respectable local merchants and notables should be induced by local officials under the orders of the high provincial authorities to extend these establishments with the object of creating by each society, additional points where the propaganda can flourish, and with a view to eradicating the habit with greater speed. These societies, however, are permitted to deal with the single matter of opium abolition, and may not discuss Government affairs, or matters of local administration, or other subjects disconnected with the anti-opium movement.

(VIII). *Charging local officials with the responsibility of leading the movement among local notables.*

In laying down this procedure reliance is placed chiefly upon the leadership of officials, so that the action taken may be genuine, thorough, and attended by satisfactory results. The high provincial authorities should annually take note of the number of opium smokers and the number of cures reported by their subordinates, and whether or not anti-opium medicine has been manufactured, and anti-opium societies have been established. Comparisons as to these points shall result in blame or reward at the end of each year, and a register shall be made and despatched to the Ministry of the Interior for consideration.

In Peking responsibility shall rest with the General Commandant of Gendarmerie and with the Governor of Shuntien. If in any district it is found that there is no single opium smoker after the expiry of the 10 years, a memorial may be made upon the subject requesting that the local officials concerned be rewarded.

In regard to the inspection of land under cultivation of opium, houses and shops, of the various licenses issued to consumers, and similar matters, strict injunctions shall be given to official servants, runners and others,

to the effect that not the smallest exactions shall be permitted. Those who disobey in this respect may be accused and shall then be punished with severity for the crime of extortion.

(IX). *Strict prohibition of consumption by officials, with a view to establishing good example.*

The 10 years limit for the cessation of opium smoking applies to the people of China generally. The officials are, however, the people's models, and if they practice a vice they cannot set an example to their subordinates or rule the people well. Since it is now the intention that the procedure is to be generally accepted as practical, the limit of time must clearly be stringent where officials are concerned, and their punishment severe, in order that good reputation may be established. For the future in the case of military and official persons of all ranks, whose age is over 60, whose craving is thus of a severe character, and who are unable to break off the habit, the treatment shall be lenient, as in the case of ordinary persons. In the case, however, of those Princes, Dukes and Officials of hereditary rank, who have not yet reached that age, or of Metropolitan Heads of Departments, of Tartar Generals, provincial Viceroy and Governors, Military Lieutenant-Governors and Banner Brigade Generals, Generals and Colonels, these have received special marks of Imperial grace and shall not be permitted to foster the habit secretly.

Those who are opium smokers may address a memorial asking for a time limit to be set for cessation of the habit, and during this period they shall not be deprived of their official rank, and a deputy shall be commissioned to replace them. After breaking off the habit they shall again be examined and may then take up their former position. No excuses of illness may be put forward, nor deception practiced by those who have failed to break off the habit before expiry of the time. Other civil and military officials of all grades and categories who smoke opium shall be subject to investigation by a deputy, commissioned by their superiors, who shall direct them to make reports themselves upon the subject, and in their case, a limit of six months shall be set irrespective of the severity of the habit.

Upon expiry of this time they shall again request inspection by a deputy and enter into a bond which shall be put upon record. If difficulties arise owing to illness with the result that the habit cannot be broken off within the time limit, the officials in question, after making a report upon the subject, shall resign hereditary ranks to their successor in accordance with custom, or if they are ordinary officials shall retire, retaining their rank. Attempts at deception or evasion with regard to this procedure shall be the subject of a recommendation that they be degraded. If the superiors concerned have been remiss in their investigations they also shall receive censure in each case. All school masters and students moreover, together with naval and military rank and file, shall be given a period of six months within which to break off the habit.

(X). *Prohibition of importation of foreign opium with a view to stopping the evil at its source.*

The prohibition of the cultivation and consumption are matters of internal administration, concerning which no delay need arise, but questions of diplomacy are concerned in respect to the foreign imported drug, and the Waiwupu shall be requested to fix upon satisfactory procedure with the British Minister. It is thus to be expected that both the foreign and the native drug shall year by year be decreased in quantity, so that by the expiry of the 10 years a complete cessation will result. Besides Indian opium, there are other kinds entering into China from Persia, Annam and the Dutch Colonies of the South. If the exporting country is a Treaty Power, negotiations may take place with the Minister in order to obtain complete prohibition. In the case, however, of Non-Treaty Powers the independent administrative rights of China may be exercised, and orders given by the various provincial officials to all subordinates, and the Commissioners of Customs to arrange for examination at all maritime and land frontiers with a view to preventing evasion.

With reference to morphia needles, of which the injury is far greater than that of opium, clear directions shall be given to all Customs stations that according to Article 11 of the Anglo-Chinese and Article 16 of the Sino-American Commercial Treaties, importation shall be strictly forbidden. No shopkeepers in China, whether native or foreign, are permitted to manufacture morphia, or needles of the kind in question. Provision is thus made for the prevention of abuses.

The posting of the above Articles in the form of proclamation for general observance in all towns and villages shall be ordered by the Provincial Authorities."

The above ten articles were followed by an Imperial Edict issued on February 8th, 1907, which sanctioned the suggestions made by the Ministry of Interior and ordered further as follows :

Imperial Edict  
of February 7th,  
1907.

In the matter of a memorial by the Ministry of the Interior dealing in full with the opium question :—This drug is an injury to the people concerning which an Edict has already been issued fixing a limit for the enforcement of strict prohibition.

The Board in question now memorialises as to the establishment of local societies, and the closure and prohibition of opium houses throughout the provinces, in accordance with certain new regulations. We hereby command all Tartar Generals, Viceroys and Governors to supervise and give directions to their subordinates conscientiously to proceed in accordance therewith. If, however, the consumption of the drug is to be strictly forbidden, it is most necessary to put a stop to the cultivation of the poppy in order that action may be radical and fundamental. We therefore enjoin and require all Tartar Generals, Viceroys and Governors gradually and year by year to reduce cultivation in accordance with the regulation as memorialised. The uniform limit of 10 years is set during which the foreign and native drug must be entirely rooted out. Let there be no remissness, deceit or dissimulation, but rather correspondence to the extreme desire of the Throne to protect and show affection for the people and to make efforts to remove a wasting disease. This is the Imperial Decree.\*

The aforecited decrees and regulations are very favourably distinguished from the earlier anti-opium regulations of the Chinese Government. For the first time a really serious attempt was made to deal rationally with such a complicated matter as the opium problem. This time the Chinese legislators abstained from resorting to extreme punitive measures as the only way of suppressing the evil, but tried to solve the situation by the gradual elimination of the drug from the country.†

However, this legislation failed to bring any considerable change in the conditions prevalent in the country. The opium trade depended not only on China's home legislation but largely on treaties with foreign nations.

As a matter of fact, paragraph I of Rule 5 of the Treaty of Tientsin, June 26th, 1858, regulating certain commodities heretofore contraband, which formed the basis for all treaty stipulations

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\*Translation from "Sin Wan Pao," February 8th, 1907.

†The Edict of the Emperor Hienfeng in 1850 prescribed that all persons found using the drug after expiration of five months from the promulgation of the Edict were to be instantly decapitated, their families sold into slavery, and their descendants for three generations excluded from the examinations. Every ten families were to constitute a self-guaranteeing unit responsible for each member; and any one having personal knowledge of a breach of this law, and concealing the fact, was to suffer the same penalties as the actual smoker. (It is needless to say that this drastic procedure was never carried into effect).—AUTHOR.



between China and other Powers\*, except the United States of America and Russia,† did not put any restriction on China in dealing with opium in the interior, which, after being imported, was solely left to the unfettered discretion of the Chinese Government. In fact, 30 years later, it was ascertained that the average amount of inland taxation was nearly three times the import duty. Further, the Chinese Government was enjoined from decreeing the decapitation of any Chinese found in possession of opium, and thus was unable to exterminate the evil. This was particularly true with regard to Shanghai and other Treaty Ports, the peculiar constitution of which excluded, as we know, any direct effect of Chinese legislation.

The foreign opium imported into China was produced almost entirely in Persia and British India and was shipped solely from British ports. Persia had no treaty with China and was, therefore, not entitled to the privileges of extraterritoriality or to the "most favoured nation" treatment. The British Government responded readily to the request of the Chinese Government and, in January 1908, agreed to restrict provisionally for three years the export from India by one-tenth in each year, beginning from 1908, but it was still open to other countries to produce opium, and under the existing treaties, their nationals were free to import it.‡

England agrees to restrict opium import, Agreement, of January 24th, 1908.

It was not surprising at all that the administration of Shanghai represented by the Shanghai Municipal Council in whom the supervision of all smoking houses, divans, and opium shops in the Settlement was vested by virtue of the Land Regulations, found itself in an embarrassing position.

Shanghai centre of opium trade.

On the one hand, it could not view the subject otherwise than in the light of sincere sympathy with China's efforts to exterminate

\*The opium question was not settled by the war of 1842, nor by the Treaty of Nanking. The problem was passed over in silence in the document and opium was not included in the articles in the tariff, liable to a duty of five per cent. *ad valorem*. The trade was still illegal and contraband. The Convention of Chefoo in 1876 practically reiterated the stipulations of Rule 5 of the Treaty of Tientsin modifying only the wording of same.

†Treaty of Wanghia, July 3rd, 1844. However, this express provision was not included in the Treaty of Tientsin, June 18th, 1858, which substituted the Treaty of Wanghia. The reason for this should be sought in the peculiar policy of Mr. Reed, American Plenipotentiary, who in spite of the express instructions of the U. S. Government to support China in any lawful measures to suppress the opium traffic, deliberately omitted this clause, in view of its injurious effects upon the interests of Americans largely engaged in the opium trade.

‡Ten Years Agreement for Suppression of Exports of Opium from India, January 24th, (?), 1908.

"1. The entire export of opium from India to any country whatsoever is limited to 51,000 chests annually and, beginning with 1908, this amount shall be reduced annually by 5,100 chests, so that at the end of ten years the entire export shall be terminated.

"2. China shall dispatch officials to Calcutta to keep watch over the packing and export of opium, but shall meddle with no other matters.

"3. The duty on foreign opium shall be double; but further consideration shall be given to the subject before the tax on native opium is increased.

"4. Opium prepared in Hongkong shall not be exported to China. Each nation shall take measures to prevent the smuggling of opium into its own territory, and the importation of prepared opium into China from Hongkong and vice versa shall be publicly prohibited.

"5. The sale and smoking of opium in the foreign concessions of China are to be stopped. If the Chinese authorities begin to put these rules into operation without the concessions, then the municipal councils shall without further notification put them into effect within the concessions.

"6. The restriction of the importation of morphia and hypodermic needles must wait until all the treaty powers consent hereto." MacMurray, "Treaties and Agreements With and Concerning China," Vol. I. 1894-1911, p. 865.

the trade in the noxious drug, and on the other, its hands were bound by its very constitution, which in order to enforce any prohibitory measure required the consent of all the Powers, who sanctioned the Land Regulations of 1898.

In fact, every Treaty Power could insist on the revocation of any measure, which could in its opinion be detrimental to the privileges of its citizens, and the Council had no option but to assent to such a revocation. Furthermore, the Municipal Council, as a governing body, could not entirely lose sight of the situation in the Settlement and ignore existing economic conditions, which precluded the possibility of any rash step.

Indeed, the economic prosperity of the foreign and Chinese communities during this period was largely due to opium.\*

Shanghai, since its opening to foreign trade, had been a distributing centre for opium and there were scarcely to be found amongst foreign import merchants† any whose prosperity and wealth were not based directly or indirectly on opium.‡

In spite of the prohibition since the Treaties of 1842-1844, the illicit traffic flourished, and in 1847 there were imported into Shanghai not less than 16,500 chests, valued at \$8,349,440; in 1848 the total was 16,950 chests valued at \$11,801,295, and in 1849 the imports totalled 22,981 chests valued at \$13,404,230. These last figures were fully maintained and in 1853 the imports reached the substantial figure of 24,200 chests valued at \$14,400,000§ while the imports of other products into this port hardly reached \$10,000,000 yearly.§

After the legislation in 1858 the import of opium increased to a greater extent, and in 1858 there were imported 33,069 chests; in the following year 33,786 chests and so on, until the amount of opium imported into China through Shanghai reached in the years just preceding the Imperial Edict of November 21st, 1906, the annual average of 22,500 piculs valued at M. \$40,000,000.||

At the date of the issue of the Imperial Edict there was a stock of opium, native and imported, at Shanghai, amounting approximately to 10,000 chests valued roughly at Tls. 20,000,000, one half of which amount was yearly consumed by the local population in the 1,511 opium houses or divans then existing and 76 shops selling the crude drug.\*\*

Municipal Council  
and prohibition  
of opium trade,  
1907.

Of course, such enormous figures could not be disregarded by the Municipal Council in view of the fact that the trade in opium

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\*" Practically every foreign bank is involved, and practically every big Chinese piece-goods, yarn or metal dealer is involved and thus the whole trade of the Settlement is interconnected in this business. If the step proposed of stopping all licenses were adopted, it would mean that Shanghai trade, and indirectly Chinese trade, would suffer a dead loss of Tls. 40,000,000, when it is remembered that the nett loss in the rubber boom—which was not over Tls. 5,000,000 to Tls. 6,000,000—brought about a blight on the trade of Shanghai for a considerable period—not to speak of its effects on China—it does not need much stretch of imagination to picture what the effect of the attack on opium would be.—" North-China Herald," December 19th, 1914.

†Mun. Council to the Senior Consul, January 12th, 1907. Mun. Council's Report, 1907.

‡Montalto de Jesus, *Historic Shanghai*, p. 49.

§H. B. Morse, *International Rel. of the Chinese Empire*. Vol. II. p. 358, 465.

||Mun. Council's Report, 1910.

\*\*Mun. Council to H.B.M. Consul-General, October 18th, 1907.

during 49 years had been considered not only lawful but even moral from a business point of view.

It was difficult to expect from a governing body vested with such powers as the Shanghai Municipal Council any measure likely to ruin a great many of the firms whose members formed the bulk of its ratepayers, or to impair the business of the whole Settlement to such an extent as to cause the collapse of its prosperity.

Moreover, there was still some doubt as to the sincerity of the Chinese Government or, rather as to its ability of enforcing the reform :—

“The policy which has animated the Council in approaching the subject with a view to the local application of restrictive measures has been one of caution,” says the Annual Report of the Municipal Council for 1907.—“Both in the Hsuehoufu district and in Szechuen, from which sources the supplies of native opium smoked in Shanghai are principally drawn, the year’s crop has been an unusually good one ; the Customs returns for imported opium show no sign of diminution ; it has appeared, therefore, impossible that any local measures for the suppression of opium-smoking will prove successful. Under these circumstances the withdrawal of the licensing system, with its attendant supervision and control, is calculated to lead to an increase of crime and add to the difficulty and cost of policing the Settlement. On the other hand, it has been the Council’s desire to indicate to the local native officials that any genuine sign of compliance with the terms of the Imperial Edict will be met with ready co-operation. No such sign, however, is the alleged closing of the opium shops on the outskirts of the Settlement and in the native city.”

And further :—

“So long as opium is produced, and unrestricted production but follows demand, its consumption within the Foreign Settlement must remain under police supervision, or otherwise every coolie hong and native lodging house will become a focus for the dissolute and criminal classes.”

In fact, the policing of such an area as Shanghai was not an easy matter and particularly if the police had to check the trafficking and smoking of opium. Practically speaking, it was beyond the power of a single body like the Municipal Council without the support of the whole Shanghai community, whose attitude in general was far from favourable to do anything which could really check the evil.

“The object which the high Chinese authorities have in view, the restriction and prevention of the opium habit, is one which certainly will not be achieved by means of a simple prohibition order such as the present, so long as the unrestricted importation of the drug into China is permitted,” ran the letter of Mr. H. Keswick, Chairman of the Municipal Council, to the Senior Consul, when the latter forwarded a proclamation of the Taotai announcing the closure of opium houses within six months, the prohibition of opium smoking by individuals, and punishment of violators of the proclamation to the extent of having their houses confiscated and sold by auction.\*

“The attraction of opium, for smokers habituated thereto during a term of years, is such that no ordinary measures of surveillance will, under present conditions, prevent its continued use.”†

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\*Proclamation of the Taotai forwarded to the Mun. Council on December 31st, 1906.

†Senior Consul to the Mun. Council December 31st, 1906 ; Mun. Council’s reply January 12th, 1907.—Mun. Council’s Report for 1907.



Chinese authorities in Settlement and prohibition policy, 1907.

Meanwhile the Chinese authorities were apparently anxious for some reason to put into immediate effect the regulations concerning the closure of the opium trade in the Foreign Settlement, regardless of the fact of its flourishing unchecked in the native city.

On December 19th, 1907, Magistrate Kuan of the Mixed Court issued two warrants directing one of the Court runners, Wang Tao, to effect the arrest of certain people within the Settlement for dealing in morphia and other drugs containing opium, but the warrants before receiving the indispensable counter-signature of the Senior Consul, were forwarded by the latter to the Council for consideration and comment.

In reply to the Senior Consul's intimation, the Council expressed itself opposed to any separate action on the part of the Chinese authorities, such as this direct instruction to an individual runner to conduct enquiries and effect arrests within the limits of the Foreign Settlement without the co-operation of the Municipal Police. Furthermore, the Council expressed the desire to see, first, a proclamation duly issued by the Taotai with regard to the prohibition of the sale of morphia, prior to any punitive measures being taken in regard to it.\*

Proclamation Morphia, 1907.

In fact, the import and trade in morphia has never been allowed officially in China. The prohibition, however, was never put into effect for the very same reasons that permitted the trade in opium prior to 1858. In 1902, the Chinese Government succeeded in including in the Treaties with Great Britain and America clauses prohibiting the import of morphia and instruments for its injection, unless imported for medical purposes,† but that was all. No further steps were taken to enforce this prohibition and the matter was left in abeyance.

Meanwhile, according to the usual Chinese custom, every law promulgated by the Central Chinese Government necessitated publication in the form of a proclamation by the Provincial Magistrate and, in case of Shanghai, by the Mixed Court Magistrate or Taotai.

The latter formed the usual channel for the promulgation of Chinese laws to be administered in the Settlement by the same authorities. The contents and form of these proclamations in some respects were subject to the control of the foreign authorities of the Foreign Settlement, who owing to the existing rules and practice established since 1876 could either countersign these proclamations and post them, or lodge protest and suspend their posting.‡

This requirement of the Council in respect of the anti-morphia proclamation was upheld by the Consular Body and on April 26th, 1907, the latter forwarded to the Council ten copies of a proclamation by the Shanghai Taotai, relating to morphia, which while

\*Senior Consul to the Mun. Council, December 31st, 1906; Mun. Council to the Senior Consul, January 11th, 1907.

†Great Britain and China, Treaty of 1902, Art. XI; U. S. and China Treaty of 1903, Art. XVI.

‡"Shanghai: Its Mixed Court and Council," 1842-1924, p. 78.

unsatisfactory in many respects in the opinion of the Council,\* were still posted in the Settlement and formed the foundation of the earlier prosecution for trafficking in morphia in the Settlement.†

The attitude assumed by the Council in regard to the closing of all existing opium houses in the Settlement aroused a protest not only on the part of the Chinese authorities who, pursuant to the Opium Regulations sanctioned by the Imperial Government were supposed to have closed all opium houses in the Chinese city, or, better to say, to have converted them into opium shops for the retail sale of the drug,‡ but also on the part of some foreign bodies§ including the British Government. The latter, through H.B.M.'s Minister at Peking, expressed its opinion that if effective measures have previously been taken to close any opium shops and dens, which may exist outside the limits of the various foreign Settlements and Concessions, the Municipal Councils of those localities should be moved to close such establishments as exist within the Settlement or Concession area, before being approached by the Chinese authorities, and that "the period of ten years fixed for the gradual extinction of poppy cultivation in China has no necessary connection with the treatment of opium dens. The poppy is allowed to be cultivated under restrictions in India, but opium saloons were totally suppressed long ago. Their suppression is a police and disciplinary measure, the necessity of which is not wholly disproved by the contention that the opium-consuming habit may be continued in private houses."||

Council and public bodies re prohibition of opium policy, 1907.

In view of these authoritative opinions and pressure the Council,\*\* still somewhat reluctant in adopting decisive measures endangering the commercial prosperity of the community, and doubting the sincerity of all "utterances" on the part of the Chinese officials,†† was compelled to reconsider its policy. It recommended for the ratepayers approval at their annual meeting the gradual closing up of all opium houses and divans, in general conformity with the suggestions of His Britannic Majesty's Government.‡‡

This meeting, held in March 1908, unanimously decided in Resolution VI that the number of licenced opium houses be reduced by one quarter from July 1st, 1908, or from such other early date and in such manner as might appear advisable to the Council for 1908-9.§§

Resolution of the Ratepayers to close the opium houses March, 1908.

\*Mun. Council to the Senior Consul, May 4th, 1907; Senior Consul's reply May 16th, 1907. Mun. Council's Report, 1907.

†This Proclamation was issued by the Taotai on April 21st, 1907.

‡A similar proclamation was again issued by the Taotai on May 1st, 1908 Senior Consul to the Mun. Council, July 9th, 1907. Taotai's letter to the Senior Consul, June 25th, 1907. Mun. Council's Report, 1907.

§Shanghai Missionary Assn. to the Mun. Council, February 25th, 1908; Mun Council's reply, February 29th, 1908.

||H.B.M. Consul-General to the Mun. Council, August 6th, 1907, and February 29th, 1908. Mun. Council's Report, 1907.

\*\*Just before the annual meeting of the ratepayers took place the Council received a letter from the U. S. Consul-General, dated March 16th, 1908, informing the Council that the American Government strongly endorsed the suppression of opium within the limits of the International Settlement of Shanghai.

††Mun. Council to the Senior Consul, October 18th, 1907. Mun. Council's Report for 1907.

‡‡Mun. Council to H.B.M. Consul-General, February 29th, 1907.

§§The practice of licensing opium houses in the Settlement dates back to July 8th, 1865, when all opium houses were first licensed.—AUTHOR.

When proceeding to put the resolution into effect, the paramount object in view was to make the measure a true test of the probable results of the total suppression of the opium trade.

It was considered that one fourth of every description of establishment should be dealt with simultaneously, and that the selected houses should be spread throughout the Settlement. On April 18th, 1908, the first drawing was conducted in the presence of three representatives of the native community, and as a result of this, in July of the same year, 358 houses were closed, 39 became licensed shops for the retail sale of the drug, and for the rest, the occupants satisfactorily employed themselves in other trades.\*

Ten Years' Agreement for suppression of Exports of Opium from India, January 24th, 1908, and Imperial Edict of 1908.

Within three days of the Council's pronouncement of its policy at the Ratepayers' Meeting, the text of a further Imperial Edict was communicated to the Press alluding to the fact that the British Government had assented to effect an annual reduction of the amount of opium imported from India, ordering the Board of Finance to raise funds to replace the opium tax, and enjoining that Board, in conjunction with the Board of the Interior and provincial authorities, to devise further rules and measures setting forth in detail the procedure for checking the cultivation of opium.

This cardinal point appeared foremost in the Consignment Regulations drawn up by the Boards, which, consisting of eight sections and 23 articles, were published at Shanghai in June, 1908. The knowledge of the difficulty with which reform in Chinese administration was introduced when large monetary gain was possible, had naturally evoked suspicion as to the effective result of the movement; and the provisions of these rules, arranging for a system of public hong's for the sale of opium, which were responsible for the payment of the tax, and through which the grower was compelled to sell and the dealer to purchase, lent colour to the suggestion that in many localities lucrative Government monopolies would be the sole tangible result of the reform.

The experience of the year, however, placed beyond doubt the fact that a large section of native opinion was devoted to the cause of eradicating the use of the drug; its consumption was no longer fashionable, and the opium houses were certainly ceasing to be public resorts.

Closure of all opium houses, December 31st, 1909.

In consideration of the entire absence of difficulty or disturbance in connection with the measures adopted, and in view of the fact that the local stock of imported native and foreign opium showed a decrease in exports to the interior, the Council decided to continue its policy, and on December 31st, 1909, all opium houses in the Settlement were closed.

Meanwhile the Chinese authorities continued their efforts to suppress the trade in morphia and all kinds of anti-opium remedies, which found a ready co-operation on the part of the Council.†

\*Mun. Council's Report for 1908, pp. 16 and 17.

†Senior Consul to the Mun. Council, May 19th, 1908; Taotai to the Senior Consul, May 1st, 1908; Taotai's proclamation dated May 1st, 1908; Mun. Council to the Senior Consul, June 1st, 1908.



However, all these measures, including the agreement of the British Government to reduce the amount of opium imported yearly from India by one-tenth, could not solve entirely the problem of suppressing opium smoking and its trade in general and in Shanghai in particular, unless all Powers agreed to stop the importation of opium into China. The start in this respect was made by the United States Government, which issued the summons to the first International Opium Conference.\*

This conference known as the International Opium Commission under the chairmanship of Bishop Charles Henry Brent, took place in Shanghai in February, 1909.

International  
Opium Confer-  
ence at Shanghai,  
1909.

The conclusions, to which this assembly arrived regarding the opium question generally, were embodied in nine resolutions to be submitted to the respective Governments represented, as follows :—

(1). That the International Opium Commission recognizes the unswerving sincerity of the Government of China in their efforts to eradicate the production and consumption of opium throughout the Empire ; the increasing body of public opinion among their own subjects by which those efforts are being supported ; and the real, though unequal, progress already made in a task which is one of the greatest magnitude.

(2). That in view of the action taken by the Government of China in suppressing the practice of opium smoking, and by other Governments to the same end, the International Opium Commission recommends that each delegation concerned move its own Government to take measures for the gradual suppression of the practice of opium smoking in its own territories and possessions with due regard to the varying circumstances of each country concerned.

(3). That the International Opium Commission finds that the use of opium in any form otherwise than for medical purposes is held by almost every participating country to be a matter for prohibition or for careful regulation ; and that each country in the administration of its system of regulation purports to be aiming, as opportunity offers, at progressively increasing stringency. In recording these conclusions the International Opium Commission recognizes the wide variations between the conditions prevailing in the different countries, but it would urge on the attention of the Governments concerned the desirability of a re-examination of their systems of regulation in the light of the experience of other countries dealing with the same problem.

(4). That the International Opium Commission finds that each Government represented has strict laws which are aimed directly or indirectly to prevent the smuggling of opium, its alkaloids, derivatives and preparations into their respective territories ; in the judgment of the International Opium Commission it is also the duty of all countries to adopt reasonable measures to prevent at ports of departure the shipment of opium, its alkaloids, derivatives and preparations, to any country which prohibits the entry of any opium, its alkaloids, derivatives and preparations.

(5). That the International Opium Commission finds that the unrestricted manufacture, sale and distribution of morphine already constitute a grave danger, and that the morphine habit shows signs of spreading ; the International Opium Commission, therefore, desires to urge strongly on all Governments that it is highly important that drastic measures should be taken by each Government in its own territories and possessions to control the manufacture, sale and distribution of this drug, and also of such other derivatives of opium as may appear on scientific inquiry to be liable to similar abuse and productive of like ill effects.

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\*U. S. Foreign Rel., 1906 ; China, No. 1. 1908 ; Report of the International Opium Commission, 2 vols, "North-China Daily News," Shanghai, 1909.

(6). That as the International Opium Commission is not constituted in such a manner as to permit the investigation from a scientific point of view of anti-opium remedies and of the properties and effects of opium and its products, but deems such investigation to be of the highest importance, the International Opium Commission desires that each delegation shall recommend this branch of the subject to its own Government for such action as that Government may think necessary.

(7). That the International Opium Commission strongly urges all Governments possessing Concessions or Settlements in China, which have not yet taken effective action towards the closing of opium divans in the said Concessions and Settlements, to take steps to that end, as soon as they may deem it possible, on the lines already adopted by several Governments.

(8). That the International Opium Commission recommends strongly that each Delegation move its Government to enter into negotiations with the Chinese with a view to effective and prompt measures being taken in the various foreign Concessions and Settlements in China for prohibition of the trade and manufacture of such Anti-Opium remedies as contain opium or its derivatives.

(9). That the International Opium Commission recommends that each delegation move its Government to apply its pharmacy laws to its subjects in the Consular districts, Concessions and Settlements in China.

Of these the seventh and eighth referred to local measures, which were already on their way to accomplishment.\*

Increase of export and consumption of opium, 1910.

However, the situation was far from being satisfactory. The closure of opium houses resulted in the increase of opium shops, the number of which jumped from 112 in 1908 to 206 in 1909. In order to check this growth, the Council augmented the license fees levied on them, but the results were also unsatisfactory. It was obvious that opium smoking in private houses had increased to a very considerable extent and in July, 1909, the Commissioner of Police reported as follows:—

“In view of the approaching closing of the remainder of the opium houses in the Settlement, it may be of interest to state that private smoking is distinctly on the increase.

“There is evidence to show that opium is smoked more than it used to be in lodging houses and native brothels. It is possible that lodgers carry their own opium more generally than was formerly the custom, but it is not conclusively proved that lodging house keepers do not in some cases supply the drug and the necessary paraphernalia for smoking.”†

On the other hand, the Regulations approved by the Imperial Decree of February 7th, 1907, seemed to be also not strictly obeyed. At any rate on December 22nd, 1909, the Senior Consul forwarded for the Council's opinion a copy of an order issued by the Mixed Court Magistrate directing certain runners to make inquiries and returns in regard to the opium shops within the Settlement. It appeared that the majority of shops failed to comply with the requirements of the provisions of Art. 5 of the Regulations, by not reporting to the Opium Guild the amount of opium in stock and consumed, and number of persons having purchased opium under special licenses issued in their names.‡

\*Senior Consul to the Mun. Council *re* anti-opium medicines, February 16th, 1909; Mun. Council to the Senior Consul, February 19th, 1909; Mun. Council's Report, 1909.

†Mun. Council's Report, 1909, p. 274 and 275.

‡Senior Consul to the Mun. Council, December 22nd, 1909; Mun. Council, January 4th, 1910. Order of the Mixed Court Magistrate Pao, dated December 21st, 1909.

But what appeared to be the most striking feature of the situation was the increasing imports of opium into Shanghai, regardless of all restrictions placed in the way of consumption of opium in the country.\*

There was no doubt that a very considerable demand for the drug still existed. The average number of opium shops licensed per month, which replaced the opium houses in accordance with the provisions of Art. 5 of the Regulations approved by the Imperial Edict of February 7th, 1907, leaped from 206 in 1909 to 317 in 1910, although the license fee for opium shops was again raised from M.\$10 as maximum and M\$1.50 as minimum, to Tls. 40 and Tls. 10 per month respectively.

The reason for this state of affairs in the Settlement was obvious. It was impossible to enforce any drastic measure against individual smokers under Arts. III and V of the Regulations to which the Chinese authorities resorted in other parts of China.

In March, 1910, the Chinese authorities proposed to hold a census conducted by native officials and the Senior Consul was accordingly approached by the Taotai,† but the Consular Body unanimously disapproved of this measure as an encroachment upon the right of the foreign authorities to administer the Settlement, where the usual quinquennial census was carried out according to the established practice without inquiry into the private life of any individual.‡

On October 12th, 1910, however, the Taotai again approached the Consular Body and this time openly suggested that smoking in the Settlement should be under permit from the Chinese Government.§

This time the Council being questioned on the subject by the Consular Body expressed itself as definitely opposed to the compulsory measures adopted by the Chinese Government against individual smokers as being incompatible with the principles of individual liberty in the Western sense of this word,|| and in reply the Chairman of the Council stated as follows:—

“ I have the honour to point out for the Taotai's information that, although the Council has recorded its intention to co-operate in the present laudable national effort to eradicate opium smoking in China,

Council refuses to prosecute individual smokers, 1910.

\*The following tables compiled from the Customs Returns for China 1905-1910 and Shanghai show the importations of the drug into the country in each year following 1907:—

*Imported through all ports open for foreign trade.*

1908	..	..	48,347 piculs	1910	..	..	35,358 piculs
1909	..	..	48,917 „	1911	..	..	27,808 „

*Imported into Shanghai.*

1905	..	..	22,103.60 piculs	1908	..	..	24,792.54 piculs
1906	..	..	22,733.30 „	1909	..	..	24,758.93 „
1907	..	..	21,672.45 „	1910	..	..	24,814.75

†Taotai Ts'ai Ta-jen to the Senior Consul, February 27th, 1910; Senior Consul to Ts'ai Ta-jen, Taotai, March 17th, 1920; Mun. Council to the Senior Consul, April 11, 1910.

‡Notice of the Mun. Council; Mun. Council to the Senior Consul, April 11th, 1910; Senior Consul to the Mun. Council, April 27th, 1910.

§Senior Consul to the Mun. Council, November 15th, 1910; Taotai Liu Yen-yi to the Senior Consul, October 12th, 1910.

||Mun. Council to the Senior Consul, November 28th, 1910.



the measures which the Council can adopt must of necessity be limited to such as are not in contravention of its principles as a Foreign Administration. The native procedure of personal coercion and restriction of individual freedom, involved by Articles II and III of the code devised in compliance with the Imperial Edict of November 20th, 1906, may perhaps be a practicable method for the interior, and is perhaps intended to involve proper safeguard of individual rights from abuse; but, I am led to the assumption that it is not, for the petition of Chairman of the City Self-Government Office shows that in the City these articles have not really been enforced in their most essential point. Certain it is that the procedure indicated in these articles would prove impracticable in the Foreign Settlement, and, under Municipal auspices, might lead in native hands to irregularities of illimitable extent, and of a kind from which the Settlement has fortunately hitherto been free.

"Indeed, no powers at present exist for issue of a license to an individual smoker in the Settlement; for the Council is empowered only to license those who "open a place for the sale of" opium or who "sell or vend" the drug, while the introduction of a Chinese Government Agency within Settlement limits, or of a system of license from without would be entirely at variance with the Land Regulations, and would likewise be repugnant to the tradition of 50 years."

And further:—

"The question of importation is, I do not doubt, receiving the most skilled and careful attention which China and the Foreign Governments concerned can provide, it is not a matter for the Council's consideration. But I enclose a table of figures showing the net importations from 1905 to the end of the June quarter of this year, which is thought by the Council to be highly instructive, for it shows 1908 and 1909 as years of larger net importation than those preceding, while that during the December quarter of last year is the largest during five years.

"In conclusion I have the honour again to assure you of the Council's wish to take all reasonable and proper measures towards abolishing the use of opium in the Settlement. To this end the Council is prepared to apply to opium shops the same procedure as was adopted in respect to divans; namely, annual reduction of the number of licenses by a proportion to be agreed upon, and simultaneous increase in the license fee to an almost prohibitive height, whereby in a definite number of years the sale of opium in the Settlement may become extinct."

First International Anti-Opium Conference at The Hague, January 23rd, 1912.

The necessity of devising adequate and uniform measures against the opium trade led to the convocation of another International Anti-Opium Conference, which was held at The Hague on January 23rd, 1912, again under the Chairmanship of Bishop Brent,\* at which an agreement was signed providing:—

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\*The adherence to the Convention drawn up by the First Opium Conference by all the nations mentioned in Art. 22 of that instrument not having obtained by December 31st, 1912, the Government of the Netherlands, as provided for, called a Conference at the Hague of the Powers that had signed in order that they might examine as to the possibility of depositing their ratifications even though there were some Powers which had not signified their intention of adhering to the Convention. As a result of this Second Opium Conference, the final Protocol of which was signed on July 9th, 1913, by the 24 participating Powers, it was agreed that the deposit of ratifications might take place.

The Third International Opium Conference was held in 1914. In its final protocol dated June 25th, 1914, it confirmed the stipulation of the Second International Conference and called for the ratification of it by all signatory Powers. In pursuance of Article A-III of the Final Protocol of the Third Conference, the Chinese Government caused its Minister at The Hague to sign the instrument of ratification on its behalf on February 11th, 1915, and so informed the interested Legations in Peking by a circular note, dated February 20th, 1915, in which it was stated that "China's prohibition of the use of opium, morphia, cocaine, etc., having been supported by all the countries which were parties to the Convention, the Chinese Government, in accordance with the arrangement agreed upon by the Opium Conference, has now caused the documents prepared by the Netherland Ministry for Foreign Affairs to be signed, and has placed it on record that the Convention is in force from the date of signature. Should questions relating to this subject arise in the future, they should be conducted in accordance with Convention."

- (1). That the powers should enact effective laws or regulations for the control of the production and distribution of raw-opium ;
- (2). That they should take measures for the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, and should prohibit its import and export ;
- (3). That they should pass laws to control the trade in and use of morphia, cocaine, and their respective salts ; and
- (4). That they should co-operate in preventing the smuggling of these drugs into and from China.

And further, especially referring to the foreign Settlements and Concessions in China.

Article 17.—The Contracting Powers having treaties with China shall undertake to adopt the measures necessary for the restraint and control of the opium-smoking habit in their leased territories, Settlements and Concessions in China, for the suppression *pari passu* with the Chinese Government of the opium divans or similar establishments which may still exist there, and for the prohibition of the use of opium in houses of amusement and of prostitution.

Article 18. The Contracting Powers having treaties with China shall take effective measures for the gradual reduction, *pari passu* with the effective measures which the Chinese Government shall take to the same end, of the number of shops, intended for the sale of raw and prepared opium which may still exist in their leased territories, Settlements and Concessions in China. They shall adopt efficacious measures for the restraint and control of the retail trade in opium in the leased territories, Settlements and Concessions, unless existing measures have already regulated the matter.

Prior to that in 1911 China entered into an agreement with the British Government, which agreed to continue the arrangement of 1907 for the unexpired period of seven years on the following conditions :—

Agreement relating to Opium between China and Great Britain, May 8th, 1911.

Article 1.—From the 1st day of January, 1911, China shall diminish annually for seven years the production of opium in China in the same proportion as the annual export from India is diminished in accordance with the terms of this agreement and of the annex appended hereto until total extinction in 1917.

Article 2.—The Chinese Government have adopted a most rigorous policy for prohibiting the production, the transport, and the smoking of native opium, and His Majesty's Government have expressed their agreement therewith and willingness to give every assistance. With a view to facilitating the continuance of this work, His Majesty's Government agree that the export of opium from India to China shall cease in less than seven years if clear proof is given of the complete absence of production of native opium in China.

Article 3.—His Majesty's Government further agree that Indian opium shall not be conveyed into any province in China which can establish by clear evidence that it has effectively suppressed the cultivation and import of native opium.

It is understood, however, that the closing of the ports of Canton and Shanghai to the import of Indian opium shall not take effect except as the final step on the part of the Chinese Government for the completion of the above measure.

Article 4.—During the period of this agreement it shall be permissible for His Majesty's Government to obtain continuous evidence of the diminution of cultivation by local enquiries and investigation conducted by one or more British officials, accompanied, if the Chinese Government so desire, by a Chinese official. Their decision as to the extent of cultivation shall be accepted by both parties to this agreement.

During the above period one or more British officials shall be given facilities for reporting on the taxation and trade restrictions on opium away from the treaty ports.

Article 5.—By the arrangement of 1907, His Majesty's Government agreed to the dispatch by China of an official to India to watch the

opium sales on condition that such official would have no power of interference. His Majesty's Government further agree that the official so dispatched may be present at the packing of the opium on the same condition.

Article 6.—The Chinese Government undertake to levy a uniform tax on all opium grown in the Chinese Empire. His Majesty's Government consent to increase the present consolidated import duty on Indian opium to 350 taels per chest of 100 catties, such increase to take effect as soon as the Chinese Government levy an equivalent excise tax on all native opium.

Article 7.—On confirmation of this agreement, and beginning with the collection of the new rate of consolidated import duty, China will at once cause to be withdrawn all restrictions placed by the provincial authorities on the wholesale trade in Indian opium such as those recently imposed at Canton and elsewhere, and also all taxation on the wholesale trade other than the consolidated import duty, and no such restrictions or taxation shall be again imposed so long as the additional article to the Chefoo Agreement remains as at present in force.

It is also understood that Indian raw opium, having paid the consolidated import duty, shall be exempt from any further taxation whatsoever in the port of import.

Should the conditions contained in the above two clauses not be duly observed, His Majesty's Government shall be at liberty to suspend or terminate this agreement at any time.

The foregoing stipulations shall not derogate in any manner from the force of the laws already published or hereafter to be published by the Chinese Government to suppress the smoking of opium and to regulate the retail trade in the drug in general.

Article 8.—With a view to assisting China in the suppression of opium, His Majesty's Government undertake that from the year 1911 the Government of India will issue an export permit with a consecutive number for each chest of Indian opium declared for shipment to or for consumption in China.

During the year 1911 the number of permits so issued shall not exceed 30,600, and shall be progressively reduced annually by 5,100 during the remaining six years ending 1917.

A copy of each permit so issued shall before shipment of opium declared for shipment to or for consumption in China be handed to the Chinese official for transmission to his Government or to the Customs authorities in China.

His Majesty's Government undertake that each chest of opium for which such permit has been granted shall be sealed by an official deputed by the Indian Government, in the presence of the Chinese official if so requested.

The Chinese Government undertake that chests of opium so sealed and accompanied by such permits may be imported into any treaty port of China without let or hindrance if such seals remain unbroken.

Article 9.—Should it appear on subsequent experience desirable at any time during the unexpired period of seven years to modify this agreement or any part thereof, it may be revised by mutual consent of the two high contracting parties.

Article 10.—This agreement shall come into force on the date of signature.

These two documents put an end to the indefinite position with regard to the suppression of opium trade in China in general and in Shanghai in particular.



## CHAPTER II.

### THE OPIUM PROBLEM AT SHANGHAI

#### MUNICIPAL COUNCIL, 1914-1926.

In face of the definite provisions stated in the preceding chapter, and those of Art. 5 of the Agreement between Great Britain and China, January, 1908, and official reports regarding the number of provinces cleared of opium, which in 1914 reached the figure of 14,\* the somewhat slow policy of the Shanghai Municipal Council appeared in Europe to be unwarranted. Finally it formed a topic for discussion in the House of Commons, and on July 17th, 1914, Sir Everard D.H. Fraser, H.B.M.'s Consul-General at Shanghai, communicated to the Council that he had received instructions from His Majesty's Minister to do what he could to encourage the reduction of opium selling licenses in the Settlement, which, His Majesty's Secretary of State regretted to learn from a question in the House of Commons, had greatly increased in number at a time when the consumption of opium in China generally was being extinguished.†

H.B.M.'s Government interferes with the situation, 1914.

In fact since 1910 the number of opium-selling licenses granted monthly by the Council increased steadily from 317 in 1910 to 329 in 1911, 374 in 1912, 465 in 1913 and 609 in 1914, but the Council still held to its former contention that the closure of all licensed establishments for the sale of the drug, controlled and supervised by the police, could only take place gradually with the cessation of the importation of opium and the exhaustion of the existing stocks. These stocks amounted in the fall of 1914 to 9,300 chests, valued approximately at Tls. 50,000,000.‡

The Council proposed to treat the licenses for the opium shops in exactly the same way as opium houses were dealt with in 1908, namely by ceasing to issue new licenses, closing the existing shops by periodical drawings by lot, and eventually completely discontinuing licenses concurrently with the disappearance of the stocks.

This policy of the Municipal Council was very severely criticized, as in the past, by the missionary associations which declared that "there is not a jot or tittle of suppression in the Council's policy" and that "the Council appears to think that it has a responsibility of the financial results that would accrue to those who have invested their money in opium, if they cease issuing licenses for its retail sale." In the opinion of these associations, it was not the duty of the Council to provide means for the financial protection and relief of

Criticism on the part of public bodies.

\*Names of Provinces ; Dates declared free.

Fengtien	Sept. 11, 1911	Chihli	..	March 1, 1913	Fukien	..	May 1, 1914
Kirin	..	do.	..	do.	Hupei	..	June 1, 1914
Heilungkiang	..	do.	..	June 15, 1913	Chekiang	..	June 16, 1914
Szechuan	..	do.	..	do.	Honan	..	do.
Shansi	..	do.	..	do.			

—The Chinese Social Political Science Review, April, 1916.

†Sir E. D. H. Fraser to the Municipal Council, July 17th, 1914 ; Mun. Council's reply July 25th, 1914 ; Sir John Jordan to Sir E. D. H. Fraser, August 17th, 1914.

‡Mun. Council to Sir E. D. H. Fraser, September 21st, 1914.

merchants who, because the trade gave large profits, had invested their money in what they knew to be, if legal, a risky trade.\*

On the other hand, the tactics of the Council were also subject to severe criticism on the part of some of the ratepayers† who refused to realize the conditions of the business life in the Settlement and to appreciate that "if the process had been other than gradual, dislocation of the financial arrangements of both foreign and Chinese residents, merchants and bankers, and the gravest administrative complications might have ensued".‡

Resolution re  
closure of opium  
shops, 1915.

But the attitude of the Council was not in the least shaken by criticism or by the propaganda of the Society for the Suppression of the Opium Trade, which communicated directly with Sir Edward Grey, then H.M.'s Secretary of State for Foreign Affairs. In March, 1915, the ratepayers at their annual meeting endorsed it, and in Resolution V instructed the Council to take necessary measures for the closure of opium shops, both wholesale and retail, in accordance with the procedure observed with reference to the opium divans in 1908.

As a result of this resolution the total extinction of the sale of opium in the Settlement took place on March 31st, 1917, in strict conformity with China's regulations and the international treaties.

It should be acknowledged that the extermination of the opium trade in the International Settlement was eagerly awaited not only by all sorts of humanitarian institutions like missionary associations, anti-opium societies, etc.,§ but also by the Chinese authorities.|| The reason for the impatience of these authorities, however, should be sought not solely in any anxiety to enforce the anti-opium regulations of the Imperial Government or those of the Republic of China, or in any other humanitarian consideration but, to a far greater extent, in fiscal interests, which the Central and Provincial Governments obtained from "pinching" this lucrative trade.

As a natural result of the exhaustion of existing stocks on account of reduced importation and cultivation of poppy in the provinces, the price of opium advanced rapidly and in 1914 had attained the amount of Tls. 6,800—Tls. 7,100 per chest,\*\* and the enormous figure of Tls. 8,200 per chest in 1917.

Shanghai  
Merchants' Opium  
Combine.

This enabled the Chinese Government by virtue of an agreement concluded with the Shanghai and Hongkong Opium Merchants' Combines on May 1st, 1915, to levy an additional tax on opium and to make within a very short time something like Tls. 21,000,000 out of the Shanghai opium stocks alone.

The gradual closure of shops selling the drug in the Settlement did not affect the price of opium, as might have been expected.

\*Statement of Shanghai Missionary Association forwarded to the Council on December 15th, 1914.

†E. S. Little to the Mun. Council, November 30th, 1914; December 8th, 1914; December 26th, 1914.

‡Mun. Council to E. S. Little, December 7th, 1914.

§Mun. Council to E. S. Little, January 28th, 1915.

||Chu Chao-hsin, Commissioner for Foreign Affairs, to the Senior Consul, April 27th, 1917.

\*\*Edward I. Ezra to E. S. Little, December 14th, 1914.—Mun. Council's Report, 1916 p. 105.

On the contrary, the closing of the native opium shops and the impossibility of the smaller traders disposing of their stocks resulted in the concentration of the whole trade in the hands of a few Shanghai opium magnates, who formed a powerful body known under the name of the Shanghai Merchants' Opium Combine.

In fact, neither the gradual closing of opium houses nor of licensed opium shops could make illegal the possession of any quantity of "certificated Indian Opium," which could still be disposed of in accordance with the provisions of Art. 7 of the Agreement relating to Opium of May 8th, 1911.\* This opium sooner or later found its way into such provinces as were still not officially closed to the importation of opium according to Art. 3 of the same Agreement, or into those provinces where the authorities were amenable to "persuasion."

In view of the important rôle played by the Shanghai Opium Merchants' Combine in the period from 1915-1917, it may be of interest to give some particulars concerning its establishment, policy and relations to the general movement for the suppression of the opium trade in China and Shanghai. The Combine was formed by certain foreign firms dealing in imported opium, Indian and Persian, for the protection of mutual interests and assistance in the disposition of stocks in hand. The management of the affairs of the Combine was entrusted to a Committee which, during the existence of the Combine, consisted of Messrs. D. E. J. Abraham, Evelyn David, E. Nissim, Edward Ezra, B. D. Tata, R. D. Katania, Sagal Thaver, Simon A. Levy, B. C. Sethna, B. H. Dastur, F. Dewjee, E. Chandoobhoyand and R. Bagoria.

From the very start it appeared that this mighty organization of wealthy firms was able to exercise great influence upon the problem of exterminating opium not only in Shanghai, but in the whole of China. It is quite comprehensible that in dealing with the corrupt Chinese officials this organization found little or no resistance, and in the native Opium Guild it found a powerful ally.

By a special arrangement the latter was bound to purchase opium exclusively from the Combine.

As a result of this the Shanghai Opium Merchants' Combine together with a similar association at Hongkong succeeded in concluding an agreement with the Chinese Government, dated May 1st, 1915, for the suppression of the illicit sale of native opium and removing any obstacles for the sale of the certified Indian opium in the provinces of Kiangsu, Kiangsi and Kwangtung on the understanding that an additional contribution of M.\$3,500 per chest would be paid upon a minimum of 6,000 chests, which would be prepaid. The term of this agreement expired on April 1st, 1917.

The result was the reintroduction of opium into these three rich and populous provinces, in spite of the clause of the British Opium Treaty providing that the importation of opium should

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\*Art. 7 of the Agreement provided *inter alia* that "on confirmation of this agreement, and beginning with the collection of the new rate of consolidated import duty, China will at once cause to be withdrawn all restrictions placed by the provincial authorities on the wholesale trade in Indian opium such as those recently imposed at Canton and elsewhere."—J. V. A. MacMurray, "Treaties and Agreements with and concerning China." Vol. I, 1894-1911.



cease before 1917, if the Chinese cleared their country of the cultivation of the poppy and traffic of opium. It also resulted in the institution of a Government Opium Testing Office in Shanghai, which conducted the prosecution of persons suspected of dealing in smuggled opium.

Of course this state of affairs could not remain without its effect upon the situation in Shanghai, and we assume the responsibility of asserting that the resolution of the Ratepayers in March 1915 concerning the closure of all opium shops on March 31st, 1917, was largely due to this arrangement.

In the following year the Opium Combine tried to obtain a further extension of nine months on the excuse that the stocks of opium that they were holding at Shanghai could not be disposed of by April 1st, 1917. The Combine appealed to the various British officials in China and to the Foreign Office in London but H.B.M.'s Government turned a deaf ear to these solicitations and even refused to authorize the registration of the Agreement of May 1st, 1915, by H.M.'s Legation at Peking, or otherwise to take cognizance of it.\*

However, the stocks of opium in the hands of the Combine were still so large that it necessitated some measures to dispose of them.

Agreement between China and the Opium Combine, January 28th, 1917.

On January 28th, 1917, the Combine succeeded in persuading the Chinese Government to hasten the end of the opium trade in the country by purchasing from the Combine the remaining stocks, estimated at 2,100 chests of Indian opium, for "medicinal purposes and not otherwise for gain." The price was fixed at 8,200 taels of Shanghai Sycee per chest, about M. \$20,000,000 in all. The payment had to be made by means of 6 per cent. Bonds of the First Year of the Chinese Republic secured by the tax on Title Deeds for Land and the Stamp Duty, redeemable not later than ten years from April 1st, 1917, "out of the proceeds of the sale of the opium for medicinal purposes or from other sources as suits the Chinese Government."†

This interesting document was signed as in the previous case on behalf of the Opium Combine by Mr. A. Howard, and sealed on behalf of the Chinese Government by Wong Chu-shwui, the Special Envoy for the Prohibition of the Sale of Opium in Kiangsu, Kiangsi and Kwangtung; Feng Kuo-chang, Tuchun of Kiangsu, and Zee Yao-ling, Civil Governor of Kiangsu.

It was not at all surprising that when this was made known the whole country was thrown into an uproar. Mass meetings of protest were held in practically every town and province and the contract was made the subject of enquiry in the Peking Parliament, which on March 30th, 1917, passed a resolution instructing the Government to cancel the agreement. Further investigations revealed the fact that the price stipulated in the contract was exorbitant, and that the opium merchants received only Tls. 5,700 per chest. The balance went into the pockets of the originators of the transaction.

The Government's excuse was that it had to assent to the deal for "diplomatic reason," but, as a matter of fact, H. B. M.'s

\*J.V. MacMurray, "Treaties and Agreements concerning China," p. 1200.

†Supplementary Agreement of January 29th, 1917.

Government again refused to authorize its representatives in China to take any cognizance of the agreement with its subsequent amendments.

However, the outburst of national indignation resulted in a supplementary agreement between the Combine and the Chinese Government signed on June 11th, 1918, by virtue of which the purchase price was reduced from Tls. 8,200 to Tls. 6,200 per chest, which made a total sum of \$13,397,940, payable in 6 per cent. Bonds and redeemable in the course of ten years as previously stipulated.

On December 4th, 1918, a Presidential Mandate was issued ordering the collection of the opium stocks purchased by the Government and their wholesale destruction by fire, which some months later was put into effect.

On the other hand, the large profits obtained from the trade during the period 1912-1916 inevitably led to an enormous increase in the smuggling of contraband opium. This affected the whole policy of the Council in its efforts at suppression and to a far greater extent the interests of the Shanghai Merchants Opium Combine by lowering the prices of the still legitimate drug and handicapping the disposal of the Indian stocks.

Opium Smuggling, 1912-1916.

It should be acknowledged that the position of the Municipal Council was not an easy one. On the one hand, it had to follow the provisions of Art. 15 of the International Opium Convention of 1912, which clearly stated that the Treaty Powers should, in conjunction with the Chinese Government, take the necessary measures to prevent the smuggling of the drug into Chinese territory, and on the other, every step of the Council towards the suppression of contraband led to the enrichment of a few opium magnates by raising the prices of "legitimate" opium, and, thus, to further oppression of the poorer classes who formed the bulk of the unfortunate smokers.

Meanwhile the Combine and Opium Guild forwarded a letter to the Municipal Council, dated January 8th, 1916, in which they urged with indisputable logic that strong measures should be taken against the sale of smuggled opium in shops licensed by the Council. We cite this letter in full as characterizing the situation in the Settlement in 1916 :

Dear Sir :—We are desired by the Shanghai Opium Combine and the Opium Guild to bring to the notice of the Council the sale in opium shops licensed by the Council of smuggled opium, and to suggest means for its suppression.

As you are doubtless aware no opium is allowed to be sold in China other than certificated Indian opium. The importation or sale of all other opium such as uncertificated Indian, Persian or Manchurian opium, is prohibited both by Treaty and by the laws of China.

In pursuance of the policy of China, which has the approval of the Treaty Powers, the trade in opium will eventually be extinguished ; and with this object the export from India and import into China of certificated Indian opium has long ceased, and when the existing stocks have been exhausted, no further opium will come from India to take their place.

The steady exhaustion of existing stocks has caused a great rise in price and this has brought about a very large amount of smuggling. The Customs have been successful in seizing great quantities of smuggled opium ; but, in spite of their vigilance, a considerable amount finds its

way into the Settlement, and is sold by the smaller opium shops. The respectable shops have nothing to do with the sale of smuggled opium, but the small shops deal in it; and the evil has increased to such an extent, that it seriously prejudices the legitimate business of respectable shops. Legitimate opium is perfectly easily distinguished from smuggled opium, as every piece and packet bears the Government stamps, while the smuggled variety is of course unstamped; and, apart from any stamp, the Persian and Manchurian opiums are quite different from Indian and Chinese varieties. Any dealer in raw opium can therefore distinguish at once whether he is buying legitimate opium or smuggled opium.

The suggestion we make is that it should be made a condition of the licensing of all opium shops that they only deal in legitimate opium, i.e., certificated Indian opium.

If it is found that they stock smuggled opium it can be seized and their license can be cancelled, and they can be dealt with by the Mixed Court.

The respectable shops are unanimous in support of this suggestion, and ask that the Council give it their careful and sympathetic consideration.\*

Council adopts  
anti-contraband  
license, 1916.

There was no other option left to the Council than to prosecute the sellers of smuggled opium and with a view to the strict observance for the future of Art. 15 of the International Opium Convention of 1912, to direct the inclusion and enforcement forthwith of an additional provision in opium licenses prohibiting the sale of contraband drug on licensed premises.† The amended license condition ran as follows:—

(3). That no opium be smoked or consumed on the premises, and that proof be produced to the satisfaction of the Overseer of Taxes, as and when required, of the provenance of all opium on the premises, and of payment of duty thereon, and that no smuggled opium be knowingly sold on the premises.

The enforcement of this condition marked the opening of a series of prosecutions; in fact, the number of cases instituted in the Mixed Court jumped from 90 in 1915 to 257 in 1916. In most cases the charge was breach of the amended license condition and was the result of pressure brought to bear on the authorities by the Opium Combine.

The latter maintained a large body of private detectives and informers, who, being highly rewarded on each occasion, swarmed in the Settlement hunting for smuggled opium.

H.B.M.'s Supreme  
Court draws at-  
tention to the  
prosecutions of  
smuggled opium,  
1916.

The situation finally became so intolerable that a jury at H.B.M.'s Supreme Court for China, in the case of *Y. S. Kumsoo v. Meyer Shibbeth* (December 1916) expressed an opinion, forwarded by the Registrar of the Court to the Municipal Council on December 21st, 1916, which stated:—

"The jury is of the opinion that it is contrary to public policy that any corporation or combine should possess the powers apparently exercised by the Opium Combine or that the Municipal Police Force should be the medium by which such powers are exercised."

In reply to this communication the Municipal Council informed the British Supreme Court on January 5th, 1917, that as far as the Municipal Police was concerned in this matter their function was merely an executive one.

\*Messrs. White-Cooper, Oppé and Master to the Mun. Council, January 8th, 1916. Mun. Council's Report, 1916.

†Mun. Council to Messrs. White-Cooper, Oppé and Master, January 21st, 1916.



"In executing the process of the Mixed Court the Police were carrying out the functions exercised by the Court 'runners' prior to the Revolution of 1911, and in so doing they were carrying out a duty which is imposed by the rules of that Court, which have the sanction of the Consular Body acting under instructions of the Diplomatic Body in Peking."\*

With a view to putting an end to public comment of this nature the Council addressed a letter, dated January 12th, 1917, to Mr. P. Grant Jones, Senior British Mixed Court Assessor, in whose hands at that time all opium cases were concentrated, asking him to dispel the unpleasant impression made upon the public by his utterance in the Mixed Court on December 29th, 1916, as quoted by the "North-China Daily News," which ran, as follows :—

"I have, in order to allay popular misapprehension on the subject, so far back as November 1st last intimated in writing to the Municipal Council our opinion that search warrants in future should only issue after a more rigid examination of the informer as to the grounds of his information."

In reply to this letter Mr. P. Grant Jones referred to the memorandum enclosed in the communication of H.B.M.'s Consul-General to the Municipal Council, dated November 2nd, 1916, the last paragraph of which embodied the following passage :

"I may add, for the information of the Council, that in view of the number of searches which have proved abortive it appears to me desirable that applications for these warrants should be made on more complete enquiry in future. The issue of a warrant is a matter which is, of course, entirely within the discretion of the Court, but the Court must have regard to the possibility that an informer, inspired by the large rewards offered for seizures, may base his information on mere rumour. In my opinion this objection will be overcome by a more rigid examination of the informer as to the source of his information, before issue of the warrant."†

This and the subsequent attitude of the Municipal Council reduced very considerably the number of prosecutions instituted at the instance of private persons and institutions like the Opium Combine and Guild, and the Chinese Government Opium Testing Office‡ until, in 1918, the Municipal Council was faced with the new task of enforcing China's anti-opium legislation in full. From the very start this task, however, proved to be not easy. It was clear that the rigid enactments of the Chinese Government against the cultivation of poppy and its consumption for smoking purposes were far from being effective.

Increase of consumption of opium, 1918-1924.

In 1919 the number of prosecutions established by the Police reached the figure of 635 and in 1920 the figure of 1,063§ which

\*Mun. Council to the Registrar of H.B.M.'s Supreme Court for China, January 5th, 1917.

†Mun. Council's Report, 1916.

‡229 opium prosecutions in 1917 and 227 in 1918. As far as the search warrants were concerned the following returns show the exact position with regard to their issue :

Years.	Warrants issued.	Years.	Warrants issued.	Years.	Warrants issued.
1916	159	1919	91	1922	115
1917	5	1920	126	1923	249
1918	Nil.	1921	114	1924	356
				1925	346

§"Shanghai: Its Mixed Court and Council,"—1842-1924, Appendix p. 315.

enabled Mr. K. J. McEuen, Commissioner of Police, to state in his annual report for 1920 :—

"In regard to the former (opium) it would perhaps be unwise to put in print all that is known to the Police of the efforts made in certain quarters to evade the laws of China and the bye-laws of the Settlement, but an opportune time should be taken by the Council to put the position before the ratepayers in order that more satisfactory conditions can be enforced. The quantity of opium seized by the police and the Customs in this port alone, a very small percentage of what actually finds its way in, shows how futile are the efforts made to suppress the evil. China, who first advocated its suppression, has displayed the utmost laxity in the supervision of poppy cultivation and the manufacture of the drug, and recent cases show that large quantities are smuggled into the Settlement by train and steamer, and if any headway is to be made, point to the necessity for some drastic action in the way of searching trains and boats, and steamers making use of public and private jetties, and Customs examination of people coming from these trains and vessels. It is also essential that proper supervision should be maintained in the western provinces of China, where the drug has been proved to come from. At present the efforts made to suppress opium are a pure farce. Opium smoking is almost as prevalent now as before prohibition came in, and there appears to be no difficulty in obtaining the drug whenever required."

And further :—

"So far as Shanghai is concerned it is safe to say that the smuggling of opium has led to an alarming increase in extortion, robbery, corruption, bribery and all manner of ill-practices of this nature, and makes one at times almost lament the days when it was not a contraband article. There are no half measures possible in the matter, either opium should be licensed once again or its total prohibition, especially its cultivation, should be insisted upon in such a way that the drug would be unobtainable except for medicinal purposes. And there are no two opinions as to which is the correct view.\*

"Any person who advocates any other course or endeavours to gloss over the conditions existing at present is not working in the best interests of the country. These remarks are made with some feeling, as the demoralization resulting in certain quarters is intimately known."†

There was no question that neither the various administrative measures concerning the suppression of opium nor the respective provisions of the Chinese Criminal Code with severe punishments could eliminate in the course of a few years the use of the drug, which for more than one century had poisoned the nation. The picture drawn by Mr. K. J. McEuen was not exaggerated. The Settlement was still full of the drug, which found its way into it in such quantities as even to bring down the price of opium, below that which existed before the closure of the legal trade in March 1917.‡

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\*The possibility of legalization of the opium trade and even establishment of a Government Opium Monopoly occupied very seriously the attention of the Peking official circles during the year 1923. The Chinese press reported that Sir Francis Aglen, Inspector-General of Customs, presented a memorial to the Chinese Government advocating the establishment of an Opium Monopoly in Shanghai. More than Tls. 10,000,000 worth of opium was confiscated by the Customs yearly, and if this Bureau were established, this huge sum of money could be added to the national revenues. It was also reported in the Chinese press that the Shanghai Branch of the Anti-Opium Association lodged a protest against any project of the legalization of the opium traffic. "North-China Herald," March 3rd, 1923.

†Mun. Council's Report, 1920.

‡Tls. 4,800 per chest in 1920 as compared with Tls. 6,200 in 1917. Of course, in some respects, the high standard of prices in 1917 should be attributed to the large speculation of the Combine and native Guild.—AUTHOR.

There was no alternative left for the Council but to follow the course adopted after the closure of public opium sale in the Settlement. The conditions as stated above in the Commissioner's report had been long foreseen, as we know, by the Council, which did not fail to draw the attention of the authorities concerned to the probability of driving the trade into illicit channels. However, the machinery for the suppression of the illicit traffic and use of the drug being once set into motion, could not be stopped in spite of the apparent fruitlessness of all efforts.

In his report for 1921, the Commissioner of Police frankly admitted that "It can be safely said that the illicit traffic in opium in the Settlement was never more flourishing than at present and the results so far obtained in efforts to suppress it only tend to demonstrate the hopelessness of the task."\*

In fact, the results of the anti-opium campaign during three years were very discouraging.

From January 1st to December 31st, 1921, 1,459 persons as against 1,063 in 1920† were prosecuted for offences connected with opium, 24 cases of the drug, weighing almost one ton and three quarters and valued at Tls. 384,000, were captured, besides four cases and 34 packages weighing 3,762 lbs., valued at about Tls. 80,000, and another seizure of opium valued at M. \$25,000.‡

Of course, the unchecked cultivation of poppy in the interior and the official recognition of opium cultivation and trade by the Vladivostok Government, which formed, since the Great Revolution in Russia and the downfall of the Russian Imperial Government, a new source of supply of opium for China, made all efforts on the part of the Shanghai Municipal Council useless. No fewer than 1,846 persons were prosecuted in 1922 on charges connected with the opium trade in the Settlement as compared with 1,471 in 1921. In 1923 the number of such persons reached the figure of 1,903; in 1924—3,853 and in 1925 the record figure of 3,264§. These short statistics speak for themselves and no improvement can be expected until a Central Government comes into existence in China having the power and desire to prevent the cultivation and smuggling of opium into the country, and to enforce its own laws.

In order to understand the intensity of the struggle carried on by the Council against the illicit traffic, it suffices to say that during the last two years only the Police conducted over 1,000 raids.||

The smuggling of opium into the Settlement during these last two years assumed almost unbelievable proportions. Practically speaking it could hardly be called "smuggling" as the bulk of the opium was imported openly with the official cognizance of the local Chinese military and civil authorities. The case of N. E. B. Ezra

Chinese Authorities favour revival of opium trade, 1924-1925.

\*Mun. Council's Report, 1921.

†See "Shanghai: Its Mixed Court and Council,"—1842-1924, Appendix p. 315.

‡Mun. Council's Report, 1921.

§Mun. Council's Report, 1922, 1923, 1924 and 1925.

||655 Raids in 1924 and 446 raids in 1925.



*vs. Lih Ching-woo et al*, which was before the Mixed Court in 1925\* and which is referred to in the next chapter, disclosed that a shipment consisting of 6,000 chests of Turkish opium was imported into Shanghai in 1923 in a single lot, the costs of landing being calculated by the parties to the action at about M. \$294,495. There is no question as to the destination of this huge sum, which went into the pockets of the Chinese officials interested in obtaining money at all costs for the continuance of their unending struggles for supremacy in China.

In fact, the situation in respect to the trade in opium became intolerable during the Kiangsu-Chekiang civil war in the fall of 1924 and subsequent occupation of Shanghai city by the Fengtien troops in 1924-1925, when the rival Tuchuns resorted to the most extravagant fiscal measures in order to obtain money for the maintenance of their troops. Opium was and, regrettably, is still almost openly sold in the native city under the auspices of the military authorities.† The Fengtien troops imported from Manchuria large consignments of raw opium, which they sold in the native city, whence it found an easy way into the Settlement, setting at naught all efforts of the Municipal Police to combat the evil.

Loud protests were voiced by the foreign and Chinese communities against such malpractices, but of no avail until the scandal culminated in a tragedy, which compelled the Fengtien authorities to send a special commission to investigate the matter on the spot.

On May 30th, 1925, a shooting affair between Chinese military dignitaries took place which resulted in General Li Hwe-yan, director of Fengtien Military Affairs in Shanghai being killed, General Cheng Kuo-jui breaking his leg and Colonel Chang Tz-ying being shot through the head. From inquiries made, it appeared that General Cheng was sent to Shanghai by General Chang Chun-chang, Commander-in-Chief of the 1st Fengtien army, to investigate the local opium situation. A quarrel arose regarding the division of the proceeds of the opium sale, in the course of which the generals resorted to weapons.

In connection with this matter it came to light that a large quantity of opium, about 1,000 chests, was brought to Shanghai during May 1925, some being landed at Woosung and the remainder being taken to the Kiangnan Arsenal, where it was landed, and later to the Lunghua yamen, the old military headquarters, where it was stored and distributed.‡

Of course, under such conditions it is a hopeless task for the Shanghai Municipal Council, even with the best police organization in the Far East at its disposal, to ameliorate the situation, particularly taking into consideration that the administration of the French Concession appears to display far greater leniency in respect to the illicit traffic.

In connection with the general struggle against the revival of the use of opium in the Settlement the Council in 1923 attempted

Restriction of sale of poisons in the Settlement, 1923.

\*See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 214.

†It is authoritatively stated that the Tupans of Honan, Yunnan and Szechuan and their huge military forces are entirely depending on the taxes levied on large tracts of land under the cultivation of poppy in these three vast provinces.—AUTHOR.

‡"North-China Herald," June 6th, 1925.

to introduce important restrictive regulations concerning the sale of drugs containing opium or its derivatives or substitutes like morphine, heroin, cocaine and eggonine and other poisonous drugs. These regulations were to be embodied by the Council in a set annexed to the Land Regulations under the authority conferred by Bye-Law XXXIV, and were the results of the work of a special commission appointed by the Municipal Council, and consisting of the representatives of the Consular Body, the French Council, the Customs, the Shanghai Medical Society, the National Medical Association of China, the Chinese General Chamber of Commerce, the Council's legal advisers, one chemist and one importer of pharmaceutical supplies.\*

Previous to that a similar attempt was made in 1921 to control noxious drugs by licensing qualified persons to sell them in medicinal quantities, but it proved in many respects impracticable. The Commission of 1923 was faced with the task not only of regulating the sale of narcotics and poisonous drugs, but of bringing it into conformity with the respective regulations of the Chinese Government.

Early in the same year 1923 the Diplomatic Body at Peking was approached by the Waichiaopu regarding the establishment at Shanghai of a bureau for the control of prohibited drugs in order to control the traffic in narcotics and so comply with China's obligations under the International Opium Convention signed at The Hague in 1912.† Provisional regulations for the registration of Chinese and foreign drug stores and provisional regulations

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\*The following gentlemen were appointed, viz: Mr. W. A. A. H. Daniels, Dr. E. L. Tartois, Mr. A. H. F. Edwards, Dr. E. L. Marsh, Dr. T. K. M. Siao, Dr. W. L. New, Mr. G. H. Wright, Mr. P. O'Brien Twigg, and Mr. C. G. Oakes.

†Soon after the meeting of the Third Hague Conference came the outbreak of the Great War. During the course of that struggle little progress could be made with regard to the ratification of the Convention. However, in the Treaty of Peace with Germany, Versailles, June 28th, 1919, a provision was inserted (Art. No. 295), the effect of which was to secure the ratification of the Convention by all the Powers signatory to the Treaty.

Furthermore, by Art. 23 of the Covenant of the League of Nations it was provided that the League is entrusted with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs. On December 15th, 1920, an "Advisory Committee on Traffic in Opium" was established in accordance with a vote of the Assembly of the League, and China, France, Great Britain, Netherlands, India, Japan, Portugal and Siam were invited to nominate members for the Committee. Later, representatives of the United States, Germany and Yugo-Slavia and three Assessors—Sir John Jordan, Mrs. Hamilton Wright, and Mr. Brenier were added to the Committee.

By a joint resolution adopted by both Houses of Congress and approved by the President of the U.S., March 2nd, 1923, the President of the U.S. was requested to urge upon the Governments of Great Britain, Persia, Turkey, Peru, Bolivia and the Netherlands the immediate necessity of limiting of the production of opium and cocoa leaves, while the U.S. representative at the League received instructions to secure a more effective execution of the provisions of the Hague Convention. As a result of this move on the part of the U.S. and recommendations by the Advisory Committee, the Assembly of the League on September 27th, 1923, resolved to convene two International Conferences to devise measures of reduction of the amount of raw opium to be imported for the purpose of smoking in China, and the suppression of the illegal production and use of opium in this country. The First opium Conference at Geneva was opened on November 3rd, 1923, but its works proved to be without practical results owing to China's withdrawal from the Conference. The motives of this withdrawal were fully set out in a Memorandum submitted by the Chinese Delegation to the Conference, in which it stated *inter alia* as follows: "The Chinese Delegation has noted the repeated declarations of the representatives of the Governments concerned that their opium policies have not been, and will not be, influenced by financial consideration. The Delegation is, however, constrained to say that, however, this may be, the fact remains that these Governments do obtain large public revenues from the traffic, and thus furnish occasion for statements like that of Sir John Jordan, when in the Opium Advisory Committee, at one of the meetings of its fifth session, he said that so long as Colonies are deriving fifty per cent. of their whole revenue from the opium traffic, it is absurd to say that financial considerations do not play a part."



governing the issue of special licenses were drawn up and the Diplomatic Body was asked to assent to their enforcement in the Settlement but up to the time of publication of this Monograph no such assent was obtained.\*

In the opinion of the Council, the control over the sale of poisons and narcotics within the Settlement had to rest entirely with the Council, provided that the regulations should be as far as possible in conformity with those adopted and applied outside the Settlement by the Chinese Government.†

On October 29th, 1923, the Commission on Sale of Poisons presented a report, in which it expressed the opinion "that the Chinese Provisional Regulations could not be recommended in their present form for approval and application in the Settlement for reasons of jurisdiction and practicability."

In various parts the rules were contrary to the Chinese Government Morphia and Cocaine Regulations, but in sympathy with the principle, which prompted the Chinese Government to attempt the regulation of the traffic in drugs, and, with a view to enforcing control of the sale thereof, the Commission advocated the adoption of regulations providing for the control and sale of noxious drugs. In doing so it followed the method which the Council had adopted in their Municipal Notification of June 16th, 1921. The Commission was moreover guided by Bye-Law XXXIV, which made subject to a license any person who sells and keeps a shop, store stall or place for the sale of noxious drugs and poisons, proprietary or patent medicines.‡

The attempt of introducing of the Noxious Drugs and Poisons Regulations§ added the last touch to the administrative measures undertaken by the Council in the course of the last 18 years in combatting the traffic and consumption of narcotics within the Settlement. It must be acknowledged that, as in all its past practices, the Council tried to reconcile its method of administration with the requirements of Chinese legislation in spite of all, perhaps occasional, mistakes. It was not its fault that the Imperial Edict of November 21st, 1906, and the subsequent legislation of the Republic of China remained a dead letter in the Settlement.

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The Second Opium Conference at Geneva was opened on November 17th, 1924. However, the works of the Conference reached soon an *impasse*. The majority of the Delegations were in favour of the consideration of the suppression of the legalized traffic in prepared opium, but, opposing this proposition, were the Delegations of the countries within whose possessions that traffic existed. The proceedings of the Conference were adjourned until January 19th, 1925, when a Committee of Sixteen was appointed to reconcile the divergent opinions. However, at the close of the final meeting of this Committee the American Delegation announced its withdrawal from the Conference on the ground that "it now clearly appears that the purpose for which the Conference was called cannot be accomplished. The reports of the various Committees of the Conference plainly indicate that there is no likelihood under present conditions that the production of raw opium and coca leaves will be restricted to the medicinal and scientific needs of the world. In fact, the nature of the reversations made (by different Nations) show that no appreciable reduction in raw opium may be expected."

The instance of the U.S. was followed by the Chinese Delegation, which stated that "the Chinese Delegation deems no good purpose will be served by its further continuance in the Conference and it is, therefore, constrained to cease its participation therein."

It is apparant that under these circumstances the works of the Second Opium Conference, besides their theoretical value, had no other practical effect upon the trafficking in the narcotics.—AUTHOR.

\*Senior Consul to Mun. Council, March 23rd, 1923.

†Mun. Council to the Senior Consul, April 10th, 1923.

‡Report of Commission on Sale of Poison, October 29th, 1923.

§For full text of the Regulations see Appendix.



These acts, though reluctantly accepted, were and are faithfully enforced by the foreign body, which 80 years ago was entrusted with the difficult task of protecting the heterogenous interests of the foreign and Chinese communities in the greatest port of the Far East.

## CHAPTER III

### THE OPIUM PROBLEM AT SHANGHAI

#### MIXED COURT PRACTICE AND MUNICIPAL POLICY, 1864-1907-1926.

Four main periods  
in the practice of  
Shanghai Judicial  
Tribunals in  
opium cases,  
1843-1926.

The practice of the judicial and consular tribunals at Shanghai with regard to criminal and civil actions in connection with the opium traffic may be divided into four main periods corresponding to the respective phases of the opium problem in China, viz:—The first period—the period of neglect—lasted from the opening of Shanghai to foreign trade in 1843 to the year 1858; the second—the period of protection—ran from 1858 until the first year of enforcement of China's anti-opium legislation in 1907; the third—the period of prosecution against possession of illegal opium—covered the years from 1907 up to the abolition of the Opium Trade in 1918; and finally, the fourth period—the period of general prosecution against opium possession and individual smoking—dating from 1918 to the present time.

Period of neglect,  
1843-1858.

The opium question was not settled by the war of 1841-42, nor by the Treaty of Nanking. This delicate point, as we have already stated, was passed over in silence by the two interested parties, although the plenipotentiaries of both Governments tried to discuss it and correspondence was exchanged on the subject. Suggestions were made to legalize the trade, but this idea had to be abandoned. There was no hope of getting the necessary Imperial sanction.

Practice of the  
British Consular  
Court, 1842-1854.

Article II of the Treaty of Nanking and Article XV of General Regulations for Trade, 1843, provided that the British Consuls "see that the just duties and other dues of the Chinese Government are duly discharged by British subjects" and "the security merchant\* being now done away with, the Consul will be security for all British merchant ships entering any of the five ports." This definitely expressed the idea of an obligation on the part of the British Consuls to take measures against the violation of these provisions. The obligation, however, was mitigated in July 1843. The Imperial High Commissioner at Canton was informed by H.B.M.'s Government that he must not expect "the British authorities to enforce against British subjects and British ships the requirements of the Chinese laws against any prohibited trade" and that "the persons of British subjects must not be molested for any act of smuggling," but that "the remedy must lie against the ship and her cargo."†

The Land Regulations for Shanghai, 1854, imposed again for a while upon H.B.M.'s Consuls the duty to control the sale of spirits

\*The Co-hong of Chinese merchants, which enjoyed the privilege of monopoly trade with foreigners in Canton, and which gave the Chinese Government both security for not availing on the part of the foreigners the Chinese regulations for the foreign trade, and machinery for collecting customs duties.—AUTHOR.

†Sir H. Pottinger to the Imperial High Commissioner at Canton, July 1843, Return House of Lords, May 8th, 1857, p. 9.

and liquors and Chinese places of entertainment, i.e. opium houses, tea houses, theatres, etc., and to prosecute any offender of these regulations.\* This time the British Consuls had to share this duty with their American and French colleagues, who were, however, freed by the provisions of the respective treaties between their countries and China from any further obligation in respect of safeguarding China's fiscal and judicial interests.

It appeared further that certain American and French consuls together with the consuls of other Treaty Powers, the majority of whom were merchants, were often directly or indirectly interested in the lucrative traffic. As far as the initiative of prosecution rested with the Chinese authorities, the position was the same. The Taotai was, more than any other, concerned in the contraband trade, exacting huge sums from the smugglers and their Chinese customers.†

Close scrutiny of all available material relating to this period reveals a complete neglect on the part of the respective Chinese and foreign authorities to do anything with a view either of stopping the importation of the prohibited drug into the Settlement or of bringing the culprits before the Court. During the whole period there was not a single opium case tried by the Consuls, who, as we know, held in their hands the administration of justice in the Settlement prior to 1864.‡

The only cases recorded during that period were three cases brought by Captain Balfour, first H.B.M.'s Consul at Shanghai, in 1843 against the brigs "Amelia," "Maingay" and "William IV." The ships were fined, and the opium confiscated and handed over to the Chinese authorities. The Taotai and Viceroy expressed their appreciation of the action of the Consul, but that was all:

Cases of "Amelia"  
"Maingay" and  
"William IV,"  
1843.

In 1852 H.B.M.'s Government informed all consuls "that for the future all interference for the protection of the Chinese revenue should be withheld. H.B.M.'s Government was strongly opposed to smuggling, but it could not permit any coercion of British merchants which was not extended to all others."§

On the other hand, Arts. VIII and XIII of the Land Regulations of 1854, vesting the control over Chinese places of entertainment and the power of punishing for breach of Municipal regulations with the American, British and French Consuls within the area of their respective jurisdictions,|| were couched in such broad terms that, if desired, the irregularities could be settled on the spot by the Municipal Police without any Consular interference. Finally, the positions was settled by the Taotai, who in spite of the prohibition of opium started in 1855 to issue official permits subject to payment of a duty of \$25 per chest for opium landed under these permits. It was apparent that after such an obvious neglect of the law on the part of the highest Chinese

Cessation of  
opium prosecu-  
tions by the Con-  
sular Courts,  
1854.

\*Land Regulations, 1854, Art. VIII and XIII.

†H. B. Morse, *Int. Rel. of the Chinese Empire*, pp. 540 and 541.

‡See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 45—48.

§Lanning and Couling: "The History of Shanghai." p. 334.

||The amalgamation of the British and American Settlements took place in 1863. See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 16.



local authority there was no further question with regard to any enforcement of the Treaty stipulations or punishment of their offenders.\*

Period of Protection, 1858-1907.

The Treaty of Tientsin, 1858, and the relaxation of the restrictions in respect to the trade in opium, opened the second period in the practice of the Shanghai judicial institutions. This period, in contradistinction to its predecessor, was characterized by an attempt on the part of the interested bodies and persons to enforce the protective stipulations of the new treaty† relating to the unrestricted importation of the drug and the fiscal interests of the Chinese Government. The bulk of these actions came under the jurisdiction of the Mixed Court, which after 1864 took cognizance of all judicial matters affecting the Chinese population within the Foreign Settlement except cases in which foreigners, subjects and citizens of Treaty Powers, appeared as defendants.

The majority of the so-called "opium cases" heard by the Mixed Court in the period following the ratification of the Treaty of Tientsin by Great Britain and the Chefoo Convention, 1876, consisted of cases pertaining to the second category, i.e., cases connected with the Chinese taxation of opium and methods of its collection.

Treaty of Tientsin. Relaxation of Rules affecting Opium, 1858.

According to the Rules of Trade annexed to the Treaty of Tientsin‡ regarding certain commodities heretofore contraband, it was declared that the restriction affecting trade in opium should be relaxed under the following conditions :

(1). Opium will henceforth pay thirty taels per picul import duty. The importer will sell it only at the port.

(2). It will be carried into the interior by Chinese only, and only as Chinese property ; the foreign trader will not be allowed to accompany it. The provisions of Art. IX of the Treaty of Tientsin, by which British subjects are authorized to proceed into the interior with passports to Trade, will not extend to it, nor will those of Art. XXVIII of the same treaty, by which the transit dues are regulated. The transit dues on it will be arranged as the Chinese Government see fit ; nor, in future revisions of the tariff, is the same rule of revision to be applied to opium as to other goods.

Thus, opium, though legalized as a product for importation, was subject to quite different treatment from other imported commodities. It was left entirely at the discretion of the Chinese authorities and subject to their unrestricted fiscal jurisdiction throughout the whole country, including the Foreign Settlement of Shanghai. The Shanghai Municipal Council, however, resisted this extension of authority with the result that it was never enforced in the Settlement, but this action on the part of the Council§ could not

\*"North-China Herald," August 18th, September 1st, 1855.

†Rule V of the Second Conference on the Tariff and Trade Rules, held on October 13th, 1858, and appended to the Treaty of Tientsin.

‡Rule V of the Rules of Trade, Tientsin, 1858.

§Consular notification, July 2nd, 1863, announcing the conclusion on June 12th, 1863, of an agreement between the Consular Body and the Taotal with regard to the collection by the Municipal Council from Chinese residents a double rating on rentals, 20 per cent. in place of 10 per cent., half of proceeds of this tax to be paid to the Taotal with the understanding that no further tax shall be imposed upon Chinese within the limits of the Settlement.—"North-China Herald," July 4th, 1863. It is to be regretted that this excellent agreement was never put into effect.—AUTHOR.

shake in the least the claim of the Chinese Government to a right indisputable in principle.\*

This gave an opportunity to the Chinese Opium Guild, which was entrusted with the task of collecting likin levied on the opium, to send their runners into the Settlement from time to time. The runners were armed with special cards of legitimation signed and stamped by the Mixed Court Magistrate, the Senior Consul and the Municipal Council. But the indefinite provisions of the Treaty of 1858 and the constant protest on the part of the Foreign Community and the Municipal Council against the right of the Chinese Government to levy taxes on the natives residing within the Settlement resulted in the opium likin runners seldom appearing within the precincts of the Settlement.

The right of the Chinese Government to prosecute Chinese residents for evading payment of likin duty on opium in the Settlement was upheld by the Court in a number of cases† notwithstanding the actual failure of such prosecutions.

Mixed Court upholds the right of the Chinese Government to collect likin on opium in the Settlement, 1871.

It is interesting to cite one of these cases, which was heard by Magistrate Chen and M. Yates, U.S. Assessor, on October 17th, 1871,§ and was entitled *F. Deslandes vs. the Opium Guild*. The Magistrate ordered ten balls of opium seized to be confiscated and the balance to be returned to the complainant.

In assenting to the judgment of the Magistrate the Assessor stated:—

"F. Deslandes claims the opium as his property. He says that he has sold it to be delivered. He refuses to give the name of the purchaser. He claims that he had the right to deliver it, and that until delivered it remained his property, and was not subject to be dealt with by the Chinese authorities.

"The right to deal in opium at the port is conceded to foreigners under the British Treaty of Tientsin. This right carries the right to deliver it to the Chinese purchaser. And if the opium has been sold subject to delivery, undoubtedly the foreigner ought not to be interfered with while effecting the same.

"The case becomes different, however, when clandestine means are taken to effect delivery. It then becomes probable that the foreigner is either defrauding the revenue or putting his purchaser in a position to do so. In my opinion the case of the opium in question, was an attempt to enable the purchaser to evade the likin tax. If this was not the case, why did Mr. Deslandes not deliver the opium in an open way, instead of placing it in packages which seemed to be those of an ordinary traveller?

"Under these circumstances I am not disposed to consider the decision of the Magistrate as at all unjust or unnecessarily severe. In-

\*Sir Fredrick W. A. Bruce, H.B.M.'s Minister at Peking, to Mr. W. H. Medhurst, November 5th, 1862; Papers tel. Aff. Chinese p. 11. November 5th, 1862 Papers tel. Aff. Chinese. p. 11; to Earl Russel, November 5th, 1862, *ibid*, p. 8.

†Taotal Shao to the Senior Consul, February 1st, 1883.—Mun. Council's Report, 1883.

§The contention of the Mixed Court found later a full recognition on the part of Sir Thomas Wade, who in his reports to the Secretary of State refers in several places to the right of the Chinese Government to tax opium wherever found:—"At Shanghai . . . opium, on which, as I contend, the Chinese have a right to lay likin taxation." . . . "On opium . . . Art. III, but secures to the Chinese Government what it is entitled to." "I do not allow opium the same right of exemption from taxation."—Reports 49, 51, 57, Corr. resp. Chefoo Convention, (China No.) 1882, p. 47. "The Chinese had as much right to lay a likin on opium in the Settlement or any larger port area, as they had no right to lay it upon other articles of the import trade." Sir T. Wade to Lord Granville, June 3rd, 1882, *ibid* p. 77.

¶"North-China Herald" November 8th, 1871, p. 864.

deed, were it not a first case I might entirely decline to interfere. Claimant has the right to appeal."

Four years later the Court, in the cases of *J. M. Walker vs. Ne Sing-sha et al*, before Magistrate Chen and Mr. A. Davenport, British Assessor, March 31st, 1875,\* and *J. M. Walker vs. Chen Fu-lin*, before Magistrate Hsieh and M. Yates, U.S. Assessor, November 18th, 1875,† upheld its former opinion with regard to the right of the Chinese authorities to collect likin on opium.

The defendants were asked to produce cards of identification authorizing them to collect likin on opium within the Settlement, which according to the complainant had to be stamped by the Municipal Council. The Court, however, refused to pass any ruling on this and stated definitely that the authority to collect likin and, thus to issue identification cards to the opium likin runners, belonged to the Chinese authorities exclusively.

Treaty provisions  
of 1876. Art. III  
of Chefoo Con-  
vention.

The Convention of Chefoo, 1876, seemed to have put an end to the indefiniteness with regard to the fiscal right of the Chinese in respect to opium, as well as an end to the hesitation which threatened to steal into the practice of the Mixed Court under pressure of general protests of the foreign traders.

Section III of the Treaty stated, as follows :

"On opium, Sir Thomas Wade will move his Government to sanction an arrangement different from that affecting other imports. British merchants, when opium is brought into port, will be obliged to have it taken cognizance of by the Customs, and deposited in hand, either in a warehouse or a receiving hulk, until such time as there is a sale for it. The importer will then pay the tariff duty upon it, and the purchasers the likin, in order to ensure the prevention of the evasion of the duty. The amount of likin to be collected will be decided by the different Provincial Governments, according to circumstances of each."

However, the delay in the ratification of the Chefoo Convention by the British Government, which was chiefly due to the difficulty of settling the opium question, resulted in the Mixed Court being placed in a more difficult position than before.‡

The tax on opium was generally, but not regularly, collected. And, finally, after the signature of an additional article and ratification of the Convention by Great Britain, July 18th, 1885, the Shanghai Municipal Council took a definite stand and insisted upon the withdrawal of all licenses issued to the likin runners by the Consular Body at Shanghai.

The Supplementary Article of the Chefoo Convention signed on July 18th, 1885 provided that all opium was on arrival at a Chinese port, to be placed in a bonded warehouse, and on removal therefrom was to pay import duty Tls. 30 and likin Tls. 80 a picul.

End of Collection  
of likin on opium  
in the Settlement,  
1885.

Immediately after the receipt of advices of the British Government having ratified the Chefoo Convention and signed the

\*"North-China Herald," April 1st, 1875, p. 316.

†"North-China Herald," November 25th, 1875, p. 529.

‡As an instance of the indefiniteness of the situation with regard to the right of the native authorities to send their runners to collect likin in the Settlement, we may point to the correspondence between the Municipal Council and the Senior Consul in 1882 and 1883 in which both sides clearly showed their entire helplessness in defining the actual position. Mun. Council to the Senior Consul, September 13th, 1882; February 15th, 1883; Taotai Shao to the Senior Consul, February 1st, 1883.—  
AUTHOR.



above-mentioned supplementary article instructions were given by the Chinese Government to the City authorities to commence at once the collection of the tax at the enhanced rate. The Taotai entered into an arrangement with the Canton and Swatow guilds to establish a special Opium Tax Office. These two guilds were entrusted with the collection of the likin on the smuggled opium in the district including the Settlement, and for the prevention of possible conflicts with foreign authorities the Municipal Council had to supply them with tickets of legitimation for their men,\* and, on this being refused, they got the Taotai to apply to the Consular Body, which decided to comply with the request.†

The police were instructed not to interfere with the likin runners in the peaceable performance of their duties, but in case of any disturbance they were to be arrested. This resulted in a number of petty cases being brought before the Mixed Court, as the actions of the likin runners were almost always followed by disturbances in the streets. Moreover, in the case of any native being arrested by the runners for having opium in his possession on which the likin had not been paid, and brought before the Mixed Court, almost invariably a foreigner appeared again to claim the opium as his property.‡

In the criminal case of the Opium Tax Office *vs.* Tsz Foo-sung before Magistrate Ko and Mr. Playfair, British Assessor, the latter wished it to be remanded pending inquiries as to the occupation of the accused, who happened to be a keeper of a regularly licensed opium shop which had paid the usual Municipal taxes. The Assessor also expressed his doubt as to the right of the native authorities to collect likin within the limits of the Settlement and requested the police to have the man taken to the Central police station pending enquiries, while the Magistrate holding opposite views ordered the runners to place the accused in the Mixed Court prison. Finally the prisoner was taken to the station, but the opium taken from him remained in possession of the Mixed Court runners.§

Case of the Opium  
Tax Office *vs.* Tsz  
Foo-sung, 1885.

Of course, the matter was settled to the satisfaction of both parties and the case was dismissed, but it caused the Municipal Council to address the Consular Body drawing its attention to the case and requesting it to have the question of the right of the Chinese authorities to collect likin in the Settlement definitely decided.|| As a result of this letter the Consular Body entered into negotiations with the Taotai regarding certain changes in the organization of the likin runners, leaving, however, the point concerning the right of the Chinese Government to collect likin in the Settlement untouched. From the reply of the Taotai, dated October 23rd, 1885, it appeared that the latter was not in any way prepared to relinquish his right of sending likin runners into the Settlement, but proposed as a palliative measure to engage two foreigners\*\* as Chief-runner and

\*R. E. Wainwright to Captain-Superintendent of Police P. J. McKuen, R.N., July 10th, 1885.

†Senior Consul to the Mun. Council, August 14th, 1885.

‡Mun. Council's Report, 1885, p. 153.

§Mun. Council to the Senior Consul, October 16th, 1885.

||Mun. Council to the Senior Consul, October 16th, 1885.

\*\*An Austrian A-ohi-li, Mr. Orriolla, and a Britisher Wei-li-hsun, Mr. Wilson.

Deputy Chief-runner to superintend and to lead the Chinese runners, as well as two foreign lawyers to prosecute in the Mixed Court on behalf of the Opium Tax Office.\* The Consular Body while still hesitating regarding the rights of the Chinese authorities to collect likin in the Settlement agreed to this proposition, informing the Taotai, however, that in all cases of trespass of law, assault or robbery, etc., "the foreigners engaged by the Taotai as runners would be subject to the jurisdiction of their proper authorities and dealt with according to the laws of their own country, and could not be allowed to plead their supposed official position in excuse."†

Under this new system the Mixed Court was flooded with cases in which the natives were charged with not having paid the likin on opium, but, as the seized opium was almost invariably claimed by foreigners as their property, the Court was unable to arrive at any decision.‡ The seriousness of the situation with regard to the increase of street disturbances compelled the Municipal Council to again address the Consular Body, which on this occasion, decided to withdraw the tickets granted some months ago to the runners of the Opium Tax Office for their legitimation in relation to the Municipal Police.§

In such a manner, without denying in principle the question of the right of the Chinese authorities to collect likin on the opium within the Settlement, the Consular Body put an end to the operation of the Opium Tax Office or, as frequently called, the Shanghai Farm.||

Protection of  
Foreign Opium  
Trade.

But if the practice of the Mixed Court in protecting and enforcing Chinese fiscal law in respect to opium was unsuccessful and resulted frequently in discordance between the Magistrates and Assessors, the operation of the Court in respect to protection of foreign opium trade and enforcing of Treaty stipulations was even less productive.

The Great Swatow  
Opium Guild Case,  
1879.

As an instance of an action when the foreign opium traders resorted to the Mixed Court for protection of their interest it is worth while to mention the "Great Swatow Opium Guild Case," which left a deep trace in the history of the Mixed Court.\*\*

\*Messrs. W. V. Drummond and R. E. Wainwright.

†Senior Consul to Taotai Shao, November 2nd, 1885.

‡Crim. Case Opium Tax Office vs. Tsy Ling-ming, before Magistrate Ko and Mr. Playfair, British Assessor, November 6th, 1885: "North-China Herald," November 11th, 1885, p. 557.

§Sir Robert Hart in his "Proposals for the Better Regulation of International Relations," dated January 23rd, 1876, states: "that foreigners convey opium for Chinese to prevent the collection of likin and make it part of their port business to sell their names and transit documents to Chinese to cover produce brought from the interior, but neither intended for foreign export nor in any way the property of foreigners."—AUTHOR.

||Mun. Council to the Senior Consul, November 16th, 1885; Senior Consul to the Mun. Council, November 18th, 1885.

¶Some time later the Chinese authorities offered to pay to the Mun. Council Tls. 100,000 a year for recognition of the right to levy likin on opium within the Settlement, but the offer was rejected.—"North-China Herald," February 17th, 1885.

It is also interesting to note that the decision of the Consular Body referred to above was the result of the general policy on the part of the Mun. Council and the Consular Body in the period of 1878-1886 to restrict the interference of the Chinese authorities with the freedom of their nationals residing in the Settlement. See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 85— and 87.—AUTHOR.

\*\*See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 203, 204.

This case aroused more than usual interest amongst the foreign mercantile community in China and the exceptional composition of the Bench permits us to believe that no less importance was attached to the case by the British and Chinese authorities.\*

The action was brought against seven prominent Chinese† styled by the complainants as members of the committee of the Swatow Opium Guild, and officially as officers in charge of the Swatow Opium Tax Office, by Messrs. T. W. Duff and D. M. David, Chekiang merchants. Messrs. Duff and David charged the Chinese with conspiracy against foreign trade and sought to recover Tls. 10,000 as compensation for obstruction and injury caused by them to their sale of opium, by openly and audaciously violating Treaty stipulations. The complainants based their claim on a despatch from H.B.M.'s Consul at Shanghai to the Taotai, in which the former protested against the activity of the Swatow Opium Guild violating, in the opinion of the Consul, the Treaty stipulations to the detriment of British commercial interests in China.

The Court consisted of the Taotai, Mr. A. Davenport, H.B.M.'s Consul, Mixed Court Magistrate Chen, Mr. C. F. K. Allen, H.B.M.'s Vice-Consul and British Assessor, and Mr. Kreyer, the Taotai's Interpreter.

A superficial glance at the charge and claim brought against a Chinese body not subject to the jurisdiction of the Mixed Court and mixing into one action of a criminal and a civil case,‡ based on a diplomatic despatch of a consul to a taotai, reveals the extraordinary irregularities under which the case was started.§

It was not surprising at all that the proceedings reached such a stage that the presence of H.B.M.'s Consul on the Bench was practically incompatible with his dignity as a representative of Great Britain's interests and he was compelled to retire, leaving the Taotai alone to conclude the case at his own discretion.

We are not interested in the complicated proceedings which followed. The final judgment was never made public and the whole matter was left in abeyance, but the charge of "breaking the Treaty" preferred against a Chinese public body is worth closer analysis.

In framing the charge against the defendants neither the private prosecutors nor the official representatives of Great Britain specified any particular provision of the Treaty alleged to have been violated. It was a charge brought forward under the general provisions, or rather the spirit, of a number of Treaties between China and Western Powers, to the benefits of which British subjects were entitled under the "most favoured nation" clause. In fact, the only articles of the Treaties which referred to the alleged conspiracy were, first, Art. V of the Treaty of Nanking, 1842; second, Art. XV of the American Treaty of Wanghia, 1844; third, Art. IX

\*"North-China Herald," September 9th, 1879.

†Li Kwan-chi, Cheng Yan-yee, Chap-kee, Tuk-shun, Wo-yu, Kwoh Hang-tung and Ye-tai.

‡Art. 1 of the Provisional Rules for the Mixed Court at Shanghai, 1869. See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 70, 71.

§"North-China Herald," October 17th, 1879.



of the French Treaty, 1844 ; fourth, Art. XV of the Swedish Treaty, 1847 ; and fifth, Art. XIV of the French Treaty of Tientsin, 1858.

The Article V of the Treaty of Nanking (1842) ran as follows :—

“ The Government of China having compelled the British merchants trading at Canton to deal exclusively with certain Chinese merchants, called, Hong-Merchants (or Co-hong), who had been licensed by the Chinese Government for that purpose, the Emperor of China agrees to abolish that practice in future at all ports where British merchants may reside, and to permit them to carry on their mercantile transactions with whatever persons they please ; and His Imperial Majesty further agrees to pay to the British Government the sum of Three Millions of Dollars on account of debts due to British subjects by some of the said Hong-Merchants, or Co-hong, who have become insolvent, and who owe very large sums of money to subjects of Her Britannic Majesty.”

The provisions of this Article were not included into the British Treaty of Tientsin, 1858, but, were left in force by virtue of Art. 1, of the same Treaty, which provided that the “ Treaty of Peace and Amity between the two nations, signed at Nanking on the 29th day of August 1842, is hereby renewed and confirmed.”

As far as the Treaties between China and other Powers were concerned they contained practically the same provision as the above-cited Art. V of the Treaty of Nanking and only the French Treaty of Tientsin, 1858, the latest then in force, as the Chefoo Convention had not been ratified by Great Britain, contained a stipulation which being translated into English ran as follows :—

“ Art. XIV.—No privileged commercial society shall henceforward be established in China, and the same shall apply to any organized coalition having for its end the exercise of a monopoly of trade. In case of the contravention of the present article, the Chinese authorities, on the representation of the Consul, or Consular Agent, shall advise as to the means of dissolving such associations, of which they are also bound to prevent the existence by the preceding prohibitions, so as to remove all that may stand in the way of free competition.”

As a matter of fact, in the action of Messrs. T. W. Duff and D. M. David *vs.* Swatow Opium Guild, if there should have been made any mention of an express provision of a Treaty, the French Treaty of Tientsin afforded the necessary opportunity. It explained also in some respect the exceptional constitution of the Court, but left unsettled two main points in issue, *viz.*, the method and degree of punishment to be inflicted on the organizers of an association having in view the monopolization of trade to the detriment of the subjects of the Treaty Power, and their personal liability in case of any damage incurred to a third party. However, it was still doubtful whether the above-cited provision could be applied to any Chinese guild in general, and that the action of a guild which deemed it fit to prohibit to their members any transactions with a particular foreign merchant could be described as contrary to the stipulations of Article XIV of the French Treaty.

It is unfortunate that the “ Great Swatow Opium Case ” did not give any authoritative answer to these important questions, which even at the present time are not without interest for the foreign mercantile community in China. The matter, as already stated, was left in abeyance in order to prove once more the futility

of the Mixed Court practice in dealing with the enforcement of Treaty stipulations.

Sundry Opium Cases, 1885-1907.

The remaining period between 1885 and 1907, the year the Imperial Edict of November 21st, 1906, became effective was characterized by a number of petty opium cases wherein the Chinese Imperial Customs prosecuted opium smugglers.

According to the interpretation of the Code of the Tsing Dynasty then in force smuggling was considered as an injury to legitimate trade and formed an offence deleterious in the highest degree, not to the State, but to the public at large and was punishable by confiscation of the smuggled goods and a certain number of blows, not exceeding one hundred.\* The opposition on the part of the Consular Body and the Municipal Council against any interference by any private or public Chinese body with the administration in the Settlement in general, however, excluded any possibility of numerous prosecutions emanating from these quarters, as could be expected in view of such a peculiar legal conception.

The Imperial Edict of November 21st, 1906, opened a new era in the practice of the Mixed Court. After more than forty years' effort to enforce laws tending to protect the opium traffic the Court was called upon to enforce China's prohibitory legislation against the same trade. As invariably the case in all matters concerning opium the Court was again left without any definite legal maxims to be followed.

Period of prosecution of illegal opium and individual smoking without license, 1907-1917.

The ten regulations of the Ministry of Interior dealing with the opium problem in China in general and in principle, providing for the punishment of offenders, did not refer to any specific provision of the penal law.

The regulations left the imposition of appropriate penalties to the discretionary power of the local administrative and judicial authorities, which in the case of the Mixed Court was limited to the power of the Mixed Court Magistrate holding the rank of a Sub-Prefect.† This power was in 1905 the same as that in 1869,‡ but later, on April 23rd, 1906, it was extended. At the time of the promulgation of the Imperial Edict the maximum term of imprisonment which could be inflicted by the Mixed Court was five years. Besides this, the Court had the power to levy a fine, the amount of which was not limited by specific rules.

The Provisional Criminal Code of the Republic of China promulgated on March 10th, 1912, and applied in the Mixed Court after January, 1913, seemed in many respects to have filled the gap, but still it left a great deal unsettled. The existence of International Treaties conflicting with the provisions of the Code, and the apparent inadequacy of the penalties§ caused considerable difficulty even in 1917 and 1920.||

\*E. Alabaster "Notes and Commentaries on Chinese Criminal Code," 1889, p. 555.

†See "Shanghai: Its Mixed Court and Council"—1842-1924, pp. 130, 131.

‡Imprisonment not exceeding 60 days and fine. Corporal punishment were abolished in 1905.—*Ibid* p.p. 53, 54 and 136.

§It is worth while to note that the Chinese Government began to realize very soon the inadequacy of punishments provided by the new Criminal Code with regard to matters relating to opium. It was definitely stated that in December, 1912

The exceptional legal status of the International Settlement which excluded any possibility of interference with the administration of the Settlement on the part of the Chinese Government and the refusal of the Municipal Council to follow blindly the Government course in the suppression of the opium traffic and individuals smoking,\* added a new factor to the general situation.

Case of D. Sassoon & Co. Ltd., *et al.* vs. China Republican, 1912.

The attitude of the Municipal Council with regard to the opium suppression and that of the mercantile community in respect to speculation on the price of the drug aroused much indignation on the part of the Chinese community. This resulted in the famous libel case, known as the "Opium Libel Action," brought against the owner and editor of the "*China Republican*," an organ of the Kuomintang party, by the leading foreign opium firms and dealers, Messrs. David Sassoon & Co., and others.†

The plaintiffs in this case petitioned the Court to issue an injunction restraining the defendant from publishing certain alleged libels, which appeared on various dates in his newspaper and any similar libels affecting the plaintiffs' trade. The defendant denied the allegations, stating that he did not intend to damage plaintiffs' personal reputation or cause injury to their trade, and insisted that, "though the trade in opium was the subject of International Treaty, it was still illegal by the laws of China. It was repeatedly the subject of prohibitory edicts, was recognized by all nations as morally indefensible, and a general undertaking was given to assist China in its total prohibition."

After lengthy hearings in a series of sittings the Court, composed of Magistrate Kuan and Mr. C. F. Garstin, British Assessor, rendered on January 15th, 1913, a judgment in which the Court, after going carefully into the nature of expressions used by the newspaper, came to the conclusion that though they contained words that might be held to be damaging to the personal reputation of any individual, they were not *per se* damaging to the company, the firms and the two individual traders as such, and refused to issue an injunction as prayed.‡

Prosecution of trafficking in "illegal," smuggled opium, 1916.

The commencement of a series of opium cases, which at the present time constitute a considerable volume of the Court work, was made in 1916 as a result of the amended license conditions for

a bold project was advanced by the Ministry of Interior to introduce three temporary degrees of punishments for offenders against the Opium-Suppression Law, which were as follows:—

- (1) Persons under 40 years of age shall be given three weeks in which to get rid of their opium habit; if they disobey, they shall be shot.
- (2) From 40 to 60 years, persons shall be allowed five weeks in which to break off their opium habit; the disobedient shall be punished by the third and fourth degree of deportation.
- (3) Persons above 60 years of age, shall be allowed eight weeks to rid themselves of the opium habit; or shall be sentenced to a term of hard-labour, and fined not more than \$300.

The above clauses were to be enforced from January, 1913. These punishments were said to have been copied from those in force in Hunan.—"*North-China Herald*," December 14th, 1912.

||Mixed Court Registrar's Reports, April 25th, 1917 and December, 1920.

\*Mun. Council to Sir Pelham Warren, H.B.M.'s Consul-General, November 28th, 1910.

†David Sassoon and Co., Ltd., F. D. Sassoon and Co., S. J. David and Co., Edward Ezra and Co., Cawaejee Pallanjee and Co., Pabaney and Co., Neotia and Co., Tata and Sons and Co., D. E. J. Abraham, H. M. H. Nemazee and Co., Ellis I. Ezra, November 14th, 1912.

‡"*North-China Herald*," January 18th, 1913.



opium shops under Bye-law 34, and the introduction into the Court's practice of the new Chinese Criminal Code.

The prosecution in all these cases was invariably represented by three bodies, the Opium Testing Office, a Chinese Government institution, the Opium Combine and Chinese Opium Guild.

In order to give a full idea of the nature of the cases arising out of the prosecution of traffic in "illicit" opium, *i.e.*, Persian, Siberian, native, etc., except Indian opium, the trade in which until April 1st, 1917, was allowed under the Treaties between China and Great Britain,\* we cite in extracts the case of the Opium Testing Office *vs.* Van Kyi-nyo.

On March 31st, 1916, a certain Van Kyi-nyo was brought before the Court composed of Messrs. Yui and P. Grant Jones, British Assessor, charged with selling opium contrary to Condition 3 of the opium shop license.

The case was remanded for further investigation and brought again before the same Court on April 17th and 20th, 1916. This time an additional charge was advanced against the accused "for that he, in Shanghai, China, on the 22nd and 27th of March, 1916, was in possession, for the purpose of sale, of opium whose importation is prohibited. Contrary to Art. 248 of the Chinese Provisional Criminal Code."†

Case of Opium  
Testing Office *vs.*  
Van Kyi-nyo,  
1916.

Mr. G. D. Musso, representing the Opium Testing Office, prosecuted and Mr. W. S. Fleming appeared for the defendant.

Mr. Musso, in opening the case, said that it was the desire of the Chinese Government to come to the final suspension of the opium traffic. He referred to the Customs Notification, No. 742, of August 1911, to the effect that from January 1st, 1912, the importation of all except Indian opium would be prohibited, and said that since then the importation of all sorts of opium, including Indian, had ceased, and as soon as the existing stock of the drug was consumed the traffic would cease. All the merchants importing opium formed a combine, and this combine sold only to the guilds, all sales to shops having to pass through the hands of the guilds. He proposed to show to the Court that the exact quantity of certified opium bought by any one merchant in Shanghai could be ascertained by reference to the guild. Attention had been called to the fact that the defendant's shop, while it was doing a very large business, had bought but comparatively little certified opium during the whole of last year.

The main point at issue was whether or not the opium found in possession of the accused was Persian opium.‡ In giving judgment and finding that the prosecution established the Persian origin of the drug, Mr. P. Grant Jones stated as follows.

"The law of China as articulated in the Provisional Criminal Code, Art. 248 or 266, according to the edition, which we have, we find absolutely prohibits dealing in opium in all forms. It says: 'You shall not manufacture, deal in, buy, sell, store or convey opium.' That law is

\*See *Supra*.

†Art. 248 of the first edition corresponds to Art. 266 of the C. P. C. C. now in force.—AUTHOR.

‡"Malwa"—opium

temporarily in abeyance under Treaty with His Britannic Majesty's Government with respect to Indian opium alone. That is to say—there is what may be called a tacit license to persons to vend Indian opium. There is no such license in respect of any other kind of opium and, therefore, this article of the Criminal Code applies in the case before us, and we are not concerned, in any way, whether it is smuggled opium or not. I will now deal with the first charge. With regard to this, it is a charge of a breach of condition 3 of the license:—‘That no opium be smoked or consumed on the premises and that no smuggled opium be knowingly sold upon the premises.’ With regard to this, it is necessary to convict, that the opium be smuggled opium. We have it in evidence that the importation of Persian opium has been prohibited in this country since January 1st, 1912. We have it in evidence, not only by interested parties but by a disinterested witness, that the opium in question is comparatively new—not more than a year and a half old.

That being so, it follows that the opium has been smuggled into the country. There will, therefore, be a conviction upon both charges. With regard to the question of penalty, offences like this are, I think, properly punished by a fine, not by imprisonment. But we have to remember the position in China is a different position from the one in Hongkong or in England. The Chinese Government is engaged in a noteworthy endeavour to suppress opium smoking in this country and it is the duty of the Court to further that endeavour by every means in its power. If, therefore, we decide to impose a fine, we are of opinion that the fine should be a heavy one.

“But the question of how heavy the fine should be may be ameliorated by two considerations. The first is that this is the first prosecution of its kind, which has taken place, and should leave us in a position to deal with other cases which may be brought before us. The second is that the defendant, being found guilty, is liable to have his license estreated. Having in view these considerations, we have decided to impose a fine of Tls. 5,000.”

Large fines as a result of inadequacy of legal penalties, 1916.

Analyzing this judgment we see that the Court in view of the inadequacy of the amount of fine provided for in Art. 266 of the Chinese Provisional Criminal Code (\$500) imposed a far greater fine, which in its opinion corresponded to the nature of the offence and the large sums involved in the opium traffic.

Moreover, in its subsequent practice the Court did not hesitate to further increase fines, even though they were contrary to the Chinese Law.\* On May 6th, 1916, the Court in the case of Opium Testing Office, Messrs. D. Sassoon & Co., and the Shanghai Opium Combine *vs.* Tung Ah-nyi on a similar charge fined the accused, in addition to 3 months' imprisonment, Tls. 10,000.

It is obvious that the Mixed Court practice in opium cases was far from being satisfactory from a legal point of view. The arbitrary definition of the amount of fine exceeding the maximum prescribed by the Chinese law in addition to the somewhat original method of the issuance of opium search warrants which have already been dealt with, resulted in considerable excitement amongst the Chinese merchants. In fact, the position became very acute and the Court was faced with the necessity of altering its practice.

Public protest and change in the practice of the Court, 1916.

On June 8th, 1916, Messrs. Ellis & Hays; Platt, Macleod & Wilson; Hansons, MacNeil, Jones & Wright, three most respectable British legal firms, filed on behalf of Kwangchow, Tapoo, Kian-yungshow, Chowyang, Wenchow, and Taichow native guilds a

\*Opium Testing Office *vs.* Wong Ts-sung, June 15th, 1916, before Messrs. Wong and P. Grant Jones, fine \$2,000.

Shanghai Opium Combine and Messrs. D. Sassoon and Co., *vs.* Wong Ming-shih. June 30th, 1916, before Messrs. Wong and P. Grant Jones, fine \$1,000.

joint petition requesting the Court to amend the procedure applied in the issuance and execution of opium search warrants. The petitioners alleged that the procedure heretofore applied resulted frequently in all stocks of goods including "legally certified opium" being confiscated, account books taken away, all business practically stopped while even sometimes no further criminal proceedings were instituted nor the seized drug tested.

On the other hand, Mr. K. E. Newman appearing on behalf of the Municipal Police on June 21st, 1916, before Messrs. Wong and P. Grant Jones made an application that the Court should vary an order issued under Rule 6 of the Rules of Mixed Court Procedure in Criminal Proceedings, authorizing Mr. G. D. Musso, representing the legal interests of the Opium Testing Office and the Opium Combine, alone or with such persons as he might deem necessary, to accompany the officer of the Court entrusted with the execution of search warrants for the seizure of opium, the importation of which was prohibited.

Dealing further with the question, Mr. Newman drew the attention of the Court to the fact that search parties arrived at all hours of the night and struck terror into the hearts of the inmates. One old man, in whose possession no opium was found, became seriously ill as a result of having been terrified by one of these visits.\*

The Court granted the application and, setting aside the order, on July 1st, 1916, gave a definite ruling with regard to applications for opium warrants. According to this ruling the principles of which are still in force, the applications should be made before the Court and signed by the party making them. The applications should be supported by a statement of not less than one credible witness.

In criticizing the methods of the Court in dealing with opium cases, however, one must recognize that the Court was justified in its actions from a practical point of view. In fact, despite the heaviest fines, exceeding the maximum provided by the Chinese law, and wholesale searches, the number of opium cases did not show any tendency to decrease. A good proportion of the fines were paid without any apparent difficulty showing that the men engaged in the traffic were making profits which enabled them to stand such heavy impositions with ease.†

Yunnan Opium Case, 1916.

The "Great Yunnan Opium Case," which occupied the Court's attention in August 1916, illustrated the actual state of affairs with regard to the smuggling of opium into the Settlement.‡ The facts in brief are as follows:—

"On August 5th, 1916, Chang Yo-tseng, Minister of Education, arrived in Shanghai on the M.M.S. 'Athos' accompanied by certain Yunnanese members of Parliament. They brought with them a large quantity of luggage which bore labels reading 'H.E. Chang Yo-tseng and delegates.' The luggage was brought ashore and for the moment disappeared. The trunks had passed the Customs in safety by reason of the fact that at the request of the Taoyin of Chapei the Customs officials

\*"North-China Herald," June 24, 1916.

†"North-China Herald," June 17th, 1916.

‡See "Shanghai: Its Mixed Court and Council"—1842-1924, p. 247.



afforded to the officials the usual diplomatic courtesy. Investigations disclosed that sixty trunks were sent to a certain lodging house from where they were transported to the Taoyin's yamen. The Police, however, succeeded in seizing four trunks out of the sixty, which the officials refused to open, saying they contained official documents only. Meanwhile, the odour from 'the official documents' was suspiciously like that of the drug for which the search was being made, and on opening the trunks they were found to contain opium. The Taoyin's yamen was searched and in an adjacent building, 20 cases containing opium were discovered, which with that seized before totalled approximately 7,000 lb., and was valued at over Tls. 500,000. The Chapei authorities objected to the removal of the drug, but their opposition was eventually overcome."

As a result of these disclosures the Mixed Court issued warrants for the arrest of seven persons, all members of the Chinese Parliament and high officials, and on August 9th, 1916, three Chinese officials Sung Woo-ding, Wong Tan-san and Wong Tsoh-ling were brought before the Court on a charge of having been in possession of opium the importation of which was prohibited. The accused were first released on bail of Tls. 10,000 each, but almost immediately this order was rescinded and the men were kept in custody. The perusal of documents found on them at the time of arrest brought to light further information and two more arrests were made, including a certain General Lee Hsiang-Zah, Commander-in-chief of the 5th Republican Army and special delegate to the Military Conference for Yunnan, and one Li Tung-woo, Commander of the Republican Army at Chapei during the first revolution.

The Chinese authorities entered a formal protest against the case being heard in the Mixed Court demanding its transfer to the City Court for trial. They based their motion upon the fact that the drug was seized in Chinese territory, and therefore, in accordance with the usual practice and rules the case should be tried by the Court under whose jurisdiction the arrests were made.

The opinion of the Court, however, was that the Mixed Court was the proper forum to try the case, as the offence was actually committed within the boundaries of the Settlement.

After a prolonged session the Court on August 19th, 1916, announced its decision, and Mr. P. Grant Jones, in passing sentence said, as follows:

"This is a very painful case, especially for those who have always wished for the good of the country in which we live. We leave the conduct of the Taoyin to the investigations of his superior authorities.

"We find the first accused, Sung Sze-gee, guilty, but in consideration of his youth and the subordinate position he holds, we sentence him to four months' imprisonment.

"We find Wong Tsoh-sung guilty. There are no mitigating circumstances and he must go to prison for nine months.

"Sung Woo-ding we find not guilty: there is not sufficient evidence to support the charge.

"We find Wong Tan-san guilty and he must go to prison for three months.

"We find General Lee Hsiang-zah not guilty, and he leaves the Court without any stain on his character.

"We find Li Tung-woo guilty and he is fined \$1,000."\*

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\*"North-China Herald." August 26th, 1916.

The withdrawal of licenses for opium shops by the Municipal Council on March 31st, 1917, resulted in a number of cases being brought before the Court against Chinese for being in possession of opium and against shops for selling the drug. As usual the charges were framed under Art. 266 of the Chinese Provisional Criminal Code and Municipal Bye-law 34. The prosecution, represented in all these cases by the Municipal Police, pointed out that under the Chinese Criminal Code there was a whole series of offences governed by Art. 266, 267, 268, etc., under which all previous cases of dealing in "illicit" opium were tried. It admitted, however, that there was nothing in the Code under which a person having "certified" opium in his possession could be prosecuted.

Withdrawal of  
opium licenses in  
the Settlement,  
1917.

Thus, if the accused had not given a satisfactory account as to how he came into possession of opium he could be charged with possession of "illicit" opium for the purpose of sale, which was contrary to Art. 266 and 267 as to persons other than shopkeepers, and under Bye-law 34 in the case of shopkeepers. Furthermore, the Municipal Council in waiving the right to issue licenses had in view the suppression of the retail sale of opium in the Settlement but without interfering with the wholesale trade in this commodity, the importation of which was entirely in the hands of foreigners.

The Court, however, did not agree with the contention of the prosecution and while admitting the possibility of framing the charges under Bye-law 34 refused to try the accused under any article of the Chinese Criminal Code, on the ground that according to the Anglo-Chinese agreement of 1911 concerning opium importation the entire trade had to cease only on December 31st, 1917, and that the Kiangsu province was not declared closed to the trade yet.

If the Code was not applied outside the Settlement it could not be applied within. The Court contended that, as the wholesale trade in opium was still not prohibited by virtue of the said agreement and non-closure of the province for opium by the Chinese Government, to obstruct the retail trade would be to obstruct the wholesale trade. On the question of the issuance of search warrants, the Court expressed itself also doubtful, considering it hardly possible for offences under the Municipal Bye-law.\*

The indefiniteness of the contentions of the prosecuting body and the Court could not remain long unsettled, and on April 29th, 1916, the Court rendered a judgment, in which it dotted the "i" by questioning finally the right of the Municipal Council to prohibit any trade in opium and, thus, indirectly to institute any proceedings for its sale in the Settlement.

The judgment which was given by Messrs. Yui and P. Grant Jones said in part :—

"The Council had power under the bye-law to regulate the trade by reasonable conditions; none to prohibit or extirpate it by degrees. They had no power to deal with opium shops otherwise than with the other trades and occupations enumerated in the bye-law; so long as the

\*Messrs. Yui and P. Grant Jones, April 25th, 1917. "North-China Herald," May 5th, 1917. Messrs. Yui and G. P. Byrne, April 30th, 1917, Mixed Court Registrar's Report, April, 1917.

licensee complied with the conditions of his license there was no power thus arbitrarily to deprive him of its benefit. If they could so deal with the one trade, they could so deal with others: they could at will prohibit the sale of intoxicating liquors, or meat, and the keeping of dogs: they could suppress theatres, bowling alleys and laundries. An attempt was made in the case of *in re McBain* and others which was before the Court of Consuls in July, 1915, to prohibit to the community a certain form of sanitation and it was there held that the power conferred upon the Municipal Council by Land Regulation 21 to 'make rules. . . with respect to the drainage of buildings, to water closets, earth closets, privies, ashpits and cesspools in connection with buildings' did not authorize the general prohibition of water closets which the Council sought to enforce by Building Rule No. 76, and that the building rule was *ultra vires* the Council. The two cases are analogous.

This case was the last important case during the period under review and resulted in putting an end to the flood of opium cases in the Mixed Court for the remaining part of 1917.

Period of general prosecution of opium and individual smoking, 1918 up to the present time.

The year 1918 marked the opening of the fourth period of the opium suppression campaign in the Settlement.

The prosecution in all cases passed from the hands of *quasi* Government institutions like the Opium Testing Office and entirely private bodies like D. Sassoon & Co., *et al*, the Shanghai Opium Combine and the Shanghai Opium Guild, into the hands of the Shanghai Municipal Council represented by the Police. The operation of Municipal Bye-law 34 ceased. All opium cases came under the provision of Chapter XXI of the Provisional Criminal Code of the Republic of China, and as far as the sale of morphine was concerned under the provisions of the Presidential Mandate, December 31st, 1921 (9th year of the Chinese Republic). However, the apparent scarcity and inadequacy of the provisions of the Code led again to certain complications with regard to the interpretation of its provisions.

One of the first points raised in the Court was the question whether or not unused outfits for opium smoking could be confiscated. In prosecutions at the Mixed Court it happened generally that confiscation of the smoker's equipment followed on conviction. Nevertheless, the Court took under doubt the legality of such general confiscations. In a case heard on September 14th, 1919, in which the accused was charged with keeping opium smoking implements, contrary to Art. 273 of the Code, Messrs. Yui and G. Ros, Italian Assessor, dismissing the charge, declined to order confiscation of the smoking "paraphernalia" on the ground that the prosecution had failed to establish the "actual use" of the implements for smoking purposes and that these things were publicly sold in Chinese territory.\*

However, the Court very soon changed its mind with regard to the confiscation of "opium paraphernalia," and in its subsequent practice transferred from the prosecution to the defence the burden of proof that the implements of opium smoking were not in "actual" use and were never intended for such use.

The next point, which was raised in Court, was the inadequacy of the penalty prescribed by the Chinese Criminal Code for offences relating to opium. As in its earlier practice the Court came to

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\*"North-China Herald," September 20th, 1919.



the conclusion that in the face of the huge profits derived from opium traffic and the attractiveness of the vice of opium smoking, the penalties prescribed by the Code had, in the majority of cases, but little deterrent effect. In practice, they set at nought all efforts on the part of the foreign administration of the Settlement in respect to the enforcement of the anti-opium legislation of the country.

"Fortunately, however," we read in the Mixed Court Registrar's report for December 1920, "the Court has on more than one occasion expressed its determination that while it is willing to take the Code as a guide for the framing of charges, it does not consider itself bound by the Code when the question of the punishment to be inflicted is under decision."

We cannot agree with the Registrar's implied approval of the Court's deviation from the letter of the law, but it must be admitted that on occasions in taking this step the action has been justified from a practical point of view. In fact, the Court during its many years' practice could not come to any other conclusion that "the infliction of fines in the majority of opium cases was successful neither as a deterrent nor as a punishment, and consequently decided to impose imprisonment with or without fines in addition. This has caused a certain amount of consternation amongst those interested. There was no offence in the Criminal Code under the category of opium which could be met by a fine except poppy cultivation, opium smoking or being in possession of any apparatus used only for the purpose of smoking opium."\*

Furthermore, the Court in the case of *S.M.P. vs. Ling Tsung et al* charged with being in possession of noxious drugs, April, 1921, followed the principle laid down in the decision No. 347 of the Chinese Supreme Court of the 4th year of the Republic that the word "opium" in Art. 266 of the Code embraces "*every kind of article whether in the form of pills or not of which opium is a compound part and which can be used as a substitute for opium.*"

Extension of the definition of "opium," 1921.

On the other hand, the practice of the Mixed Court in opium cases was not a little embarrassed by the existence of as many jurisdictions within the Settlement as there were nationalities finding residence there. The opium traffic still presented and undoubtedly continues to present such a lucrative return that not only Chinese were and are heavily indulging in this kind of business but also a number of foreigners. The privilege of extraterritorial jurisdiction enabled them frequently not only to escape with personal impunity when caught *flagrante delicto* owing to the leniency of that Western law, to which they happened to be subject, but even to support the Chinese in their illicit traffic.†

Prosecutions of foreigners under foreign laws, 1921-1923.

\*Mixed Court Registrar's Report, November, 1923.

†On February 9th, 1918, in the U.S. Court for China one A. M. T. Woodward was charged with unlawfully importing into China 4,400 lb. of opium, valued at about G.\$200,000, contrary to the provisions of the Treaty between the United States and China concluded on November 17th, 1880.

Major C. P. Holcomb, District Attorney, prosecuted, and Mr. A. S. P. White-Cooper watched the case on behalf of the Chinese Maritime Customs. The defendant pleaded guilty and asked that the Court should deal leniently with him.

Major Holcomb said that the punishment fixed by law for the offence was inadequate and he asked that the Court should inflict the maximum penalty of Gold \$500.

The defendant was fined Gold \$500, which sum was of course paid and was nothing as compared with the price of imported opium.—"North-China Herald," February 9th, 1918.

As a glaring instance of such a position, we may cite the case of *S.M.P. vs. Sung Ah-nyi* which was before Messrs. Tsang and Ferrajolo, Italian Assessor, on May 14th, 1921, and recorded in the Mixed Court Registrar's Report, May 1921.

The accused was charged with being in possession of 117 lb. of smuggled opium. During the trial Mr. Jovino, Italian subject, stood up in Court and stated that the opium was his property. The Assessor then intimated that the case against the accused would be dismissed and endorsed the charge sheet: "Mr. Jovino comes to Court and states that he is the owner of the opium. As he is an Italian subject this Court has no jurisdiction. Case dismissed and opium to be handed over to the owner." The Magistrate marked the Chinese sheet: "Defendant released."\*

Preserving intact the wording of this peculiar judgment as cited in the said report of the Registrar, we may add that this case reminds us of the earlier practice of the Court in the prosecution of the illicit opium trade when foreigners helped the Chinese to evade the payment of likin levied on opium.

On the other hand, the Court had also to overcome the resistance of some of the foreign Consulates in the execution of opium search warrants. It was the same system of protection, which was accorded to the Chinese and foreigners of Chinese descent with a very doubtful right to such protection and which regretfully from time to time has marred the smooth operation of the Mixed Court since its very inauguration.

As a curious instance of such a protection we may point to the instance, which occurred on August 21st, 1923, when the Municipal Police tried to execute a search warrant issued by the Mixed Court against premises occupied by a Chinese named Kwan Chang. During the search a member of the searching party noticed hung up on a wall a certificate announcing to all whom it might concern that upon January 1st, 1923, Kwan Chang was registered at the Portuguese Consulate as a Portuguese subject. The result of this exhibition was that the Police had no alternative but to withdraw in spite of the fact that the opium had been seen there. An effort was then made to get in touch with the Portuguese authorities but it was impossible owing to the absence of the Consul-General and the Vice-Consul. The Acting Consul appeared to be willing to assist the Police, but was prevented from doing so by a somewhat strange instruction given him by the Consul General prior to his departure. The instruction was this, that in the event of the Municipal Police applying for any warrant the Acting Consul was first to obtain from them a bond of indemnity, under the terms of which the Police would agree to indemnify any Portuguese firm for any damages they might do to the premises or the business in the event of no opium being found. This intelligent anticipation of police action had the natural effect that no search could

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\*Justice requires us to mention that the same Mr. L. E. Jovino was two years later charged before the Italian Consular Court with having in his possession 619 lb. of opium (value \$50,000) contrary to the Italian anti-opium law. He was sentenced by Com. G. de' Rossi and two Assessors to two months' imprisonment and a fine of It. Lire 1000. The sentence, however, was suspended for two years on accused's personal undertaking to keep out of trouble for that period, and "on the ground," as Com. de' Rossi stated, "of it being defendant's first offence and the necessity of his supporting a large family."—"North-China Herald," December 15th, 1923.

be effected, since obviously neither the police nor any other judicial or administrative authority could give such an undertaking on behalf of the Municipal Council.\*

The ingeniousness displayed by the accused on different occasions resulted in the Mixed Court having to adopt a system of checking the possibility of their escaping with impunity. It was for instance frequently noticed that in the majority of cases a landlord or chief tenant charged with permitting opium smoking in the premises rented by him invariably denied all knowledge of the offence and produced a lease alleging that the premises concerned had been sublet. This was the means of his avoiding the punishment, while the sub-tenant, who in many cases was a well-paid substitute or "stool-pigeon" was promised a substantial financial remuneration in the event of his being sentenced to imprisonment.

Opium and Landlord's responsibility, 1923.

The Court,† however, on September 26th, 1923, in the case of *S.M.P. vs. Woo Yung-loang* charged with allowing opium smoking in certain premises, while five others were charged with aiding and abetting the sale of the drug, gave a definite ruling to the effect that it was impossible for opium smoking to have been carried on without the knowledge of the landlord who should be held responsible for allowing such a practice.‡

Two years later in 1925 the Court stipulated more definitely the responsibility of landlords in cases where opium smoking was practised in their premises. It was noticed that houses after having been raided more than once by the Police were still used for selling purposes, the idea being that the clients already knew where opium was obtainable, and it would have been a nuisance to begin selling at a new address.

Landlord's bond for not allowing opium smoking in his premises, 1925.

With the object of preventing this the Court ordered on every occasion, after opium was found in any premises, that the latter be sealed and then the landlords had to come to Court to apply for the premises to be unsealed, which was granted only on condition that the landlord put up a bond guaranteeing that the premises would not again be used for the sale of opium.

However, all this effort of the Court did not bring any noticeable change in the general situation with regard to the suppression of the trade and consumption of opium in the Settlement. The reasons, which are obvious, are given in detail in the preceding chapters. It is almost hopeless to expect that the Court armed with such a punitive power as provided by the present Provisional Criminal Code and even resorting sometimes to a very liberal interpretation of its provisions is able to check the evil in face of the general corruption of the local Chinese authorities.

The famous case of *Mr. N. E. B. Ezra vs. C. K. Yap et al* before the Court in 1925 well illustrates the impotence of the Mixed Court surrounded by general demoralization.

\*"North-China Herald," August 25th, 1923.

†Messrs. Kuan and A. J. Martin.

‡Mixed Court Registrar's Report, September, 1923.

Case of *S.M.P. vs. Wong Tse-nyok et al* before Messrs. Kuan and A. J. Martin, August 10th, 1925, *ibid*, September, 1925.



The documents seized in this case by the Municipal Police showed that the huge quantity of opium imported to Shanghai was landed outside Woosung Forts, and thence transferred to the Kiangnan Arsenal, both places outside the jurisdiction of the Court.

"The Navy, Army and Police will generally assist in the protection of the goods," said one clause of the agreement concluded by the importers and one who concealed his identity under the name of "Dzien Nyih Koong S."

On the other hand, the accounts of this opium combine found by the Police speak more than eloquently :

*"Paid to the accounts of : T. T. Constantinople \$377,897 ; Basle \$198,276 ; S. S. Kamagato Maru \$170,800 ; lading charges \$294,495. Total \$1,041,676."*

In fact, it is beyond the power of a court, whose legal status has almost daily been challenged by the Government of the Republic of China, and whose orders are frequently neglected by foreign authorities, to do more in the labyrinth of conflicting laws, treaties and regulations for the maintenance of justice and order in the International Settlement of Shanghai, than has been done by the International Mixed Court at Shanghai during its whole history.

# APPENDIX





## WHARFAGE DUES

(See page 96.)

**MEMORANDUM OF AGREEMENT** made and entered into this twentieth day of March one thousand eight hundred and ninety-nine between the Council for the Foreign Community of Shanghai, North of the Yangkingpang, hereinafter called "the Council," of the first part, the Conseil d'Administration Municipal de la Concession Francaise à Changhai, hereinafter called "the French Council," of the second part and the Commissioner at Shanghai of the Imperial Maritime Customs, hereinafter called "the Commissioner," of the third part.

1.—The Commissioner shall collect on behalf of the Councils wharfage dues on all goods passed through the Custom House as follows :—

				Hk.				
				Tls.	m.	c.	c.	
On Opium—Raw, per chest	...	...	...	0	2	8	0	
Boiled, per catty	...	...	...	0	0	0	4	
Refuse, per picul	...	...	...	0	1	0	0	
On Silk—Steam Filature, per picul	...	...	...	0	3	2	0	
Raw and White, „	...	...	...	0	1	6	0	
Yellow, native, „	...	...	...	0	1	3	5	
Wild, Raw, „	...	...	...	0	1	0	0	
Wild, Filature, „	...	...	...	0	1	2	0	
Re-reeled, Native, „	...	...	...	0	2	5	0	
Re-reeled, Filature, „	...	...	...	0	3	0	0	
Cocoon, „	...	...	...	0	2	4	5	
On Tea—Black and Green, „	...	...	...	0	0	1	5	
Brick, „	...	...	...	0	0	1	0	
Dust, „	...	...	...	0	0	0	3	
On Treasure—per Tls. 1,000	...	...	...	0	3	0	0	

On all other Customs dutiable goods—2 per cent. on amount of Customs duty levied.

On all goods classed as "duty free" by the Customs, 1/10th of 1 per cent. on the declared value.

2.—The Commissioner shall render due account of sums so collected to both Councils quarterly affording detailed information regarding the situation of the wharves and jetties at which all goods are landed or shipped.

3.—The Commissioner shall keep due account of all sums expended in collection, including salaries, stationery, etc. and the total amount of such expenses shall be borne one-half by the Shanghai Taotai and one quarter each by the Council and the French Council.

4.—After deduction of each share of the cost of collection the Commissioner shall remit the proceeds thereof quarterly as follows :—

To the Shanghai Taotai one-half of the dues on "Native or Domestic" trade.

To the French Council 25 per cent. of the total collection after deduction of the Taotai's apportionment.

To the Council the remainder.

5.—This Agreement shall commence and remain in force for one year from the first day of April 1899.

6.—If at the end of the period of duration of this Agreement it shall be shown upon examination of the accounts specified in Art. 2 thereof that the French Council is rightly entitled to a larger proportion of the dues than that provided under Art. 4, the Council shall refund to the French Council such sum as may be required in adjustment but in no case shall the proportion exceed 33 per cent.

7.—In consideration and during the continuance of this Agreement payments of the sums hitherto remitted by the Shanghai Taotai to the Councils in nominal commutation of native dues shall be suspended.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written."

—Mun. Council's Annual Report, 1899, p. 179.

# REPORT OF THE CHILD LABOUR COMMISSION, 1924

(See page 110.)

## PART I.

Terms of  
Reference

The Commission was appointed by the Council in June, 1923 :—

“To enquire into the conditions of child labour in Shanghai and the vicinity and to make recommendations to the Council as to what regulations, if any, should be applied to child labour in the foreign Settlement of Shanghai, having regard to practical considerations and to local conditions generally.”

Preliminary  
Observations:

The Commission has held thirty-three meetings and heard the evidence of thirty-six witnesses. Amongst the witnesses who gave evidence were doctors, officers of the Municipal Services, social welfare workers, employers, contractors, and one woman who had worked for many years in silk filatures. It was early apparent that, apart from the widespread and continuing activities of certain groups and committees interested in religious, social, and industrial work, there was little general public interest in Shanghai in the subject-matter of this enquiry. In this connexion it might be mentioned that, upon notice being inserted in the native and foreign press informing the public of the appointment of the Commission and the nature of its labours, and inviting all who might desire to attend before it and give evidence, response was made by two persons only; one, a foreigner who expressed the opinion, based on a long residence in this country, that whereas a large proportion of the children in China are bright and intelligent, the monotonous routine of work and absence of education results in a considerable number of the adults being unintelligent and dull; the other, a native interested in the supply of child labour to a waste silk filature, who, it was soon obvious, came merely to ascertain how far his particular activities would be affected by any action taken by the Commission. Other than these two individuals the witnesses who gave evidence were persons who did so at the express request of the Commission.

One result of this lack of general public interest was that, with the exception of certain industries, such as cotton manufacturing and silk reeling, the Commission had to be content with information of a more or less general character, supplemented as far as was possible by the personal observations of its members. As far as the Commission has been able to ascertain there are few records of observations by individuals or bodies, whether native or foreign, and no reliable statistics upon any of the matters germane to this enquiry. The ground broken was virgin soil, and it is not pretended that the conclusions of fact at which the Commission has arrived are either exhaustive or beyond modification. Modern conditions of mass production, involving as they do the use of power-driven machinery and the employment of large numbers of work people in the confined space of a mill or factory are, comparatively speaking, new to China. They exist to-day only in a few areas, the most important of which is Shanghai and its vicinity where the industrial development in recent years has been very rapid. The general standard of living throughout the whole country compared with other and, from a modern industrial point of view, older parts of the world is extremely low. There are no facilities for the education of the vast majority of the people. Circumstances such as these, coupled with a large birthrate, result, as is the case, in the population ever tending to outstrip the means of subsistence. The industrial workers are, generally speaking, unorganized and Trade Unions with the power lent by large accumulated funds are entirely unknown.

Evidence—  
General.

The evidence as to the present average earnings of unskilled labourers in the Shanghai district was somewhat conflicting. It can be said, however, with some certainty, that the average monthly earnings of a workman of the coolie class are not greater than \$15, whilst in some instances, such as ricksha coolies, they may be as low as \$8. One witness stated that an adult female feather-sorter did not receive more than ten cents for a day's work. The average cost of living for a man, and his wife of the very poorest class was generally given as \$16 a month. The Commission has no reason to believe that earnings in the Shanghai district are lower than in any other part of the country. On the other hand, there is every probability that relatively they are slightly higher.

There is no doubt that it is the general practice for the vast majority of Chinese children to be made by their parents or others having authority over them to commence to work at the earliest age possible, having regard to the nature of the work available. Where the family is engaged in tilling the soil there is little harm, except upon educational grounds, in this practice, as it is unlikely that the child will attempt or be made to attempt tasks beyond its capacity. This statement, however is not true where the work in question has to be performed under less hygienic conditions, and still less is it true where it involves long hours and monotonous operations. This general practice obtains in the Shanghai district equally with the rest of China. The causes of its existence are economic, social, and absence of educational facilities, but, in the opinion of the Commission, the first named is the primary cause.

The medical evidence taken by the Commission and germane to this enquiry can be summarised as follows: It was stated that country children in China are of good physique whilst those living in the cities are, generally speaking, below the standard of Western countries. Tuberculosis is particularly prevalent in the towns. It was stated by one doctor that she really believed that children were worse off in the modern factories than in their native homes because of the humidity of the air which was bad for the tubercular child. The crowded living conditions are to a great extent responsible for the poor physique observed. It was agreed by all the medical witnesses that the existing industrial conditions in Shanghai are extremely adverse to the bodily and mental welfare of the Chinese child employee. Such children as a body, were said to be physically inferior to those not so employed but no definite measurements or other particulars were given. Industrial accidents were largely attributed to fatigue and carelessness following on long hours of monotonous work.

Evidence—  
Medical.

The industries in which children are employed may be divided for the sake of convenience into three classes:—

Evidence—  
Particular  
Industries.

1. *Domestic.*—Young female children are commonly purchased and employed as domestic servants. They probably begin to work as soon as it is possible for them physically to do so. This practice is general throughout the country. It obviously lends itself to great abuse and the Commission has little doubt that, like other forms of slavery, it is the source of much human misery. The Commission has reason to believe, from the evidence given before it, that many slave children are employed in native brothels and trained to prostitution. Such sale of female children, although undoubtedly contrary to Chinese law, does not appear to be interfered with in any way by those charged with the administration of justice. It is, however, true that in cases where actual cruelty is proved the International Mixed Court at Shanghai will order children to be taken away from the custody of the persons concerned. Apart from evidence as to the existence of this practice and its resultant evils, the Commission was able to obtain little reliable information as to the general conditions of the employment of children as domestic servants.

2. *Shops, Small Work Shops, Home Industries, Laundries and the Building Trades.*—The apprentice system is general in these occupations. The commencement age varies according to the nature of the employment. There is little doubt that the average child is apprenticed at the earliest age at which, having regard to the nature of the particular occupation, it can begin to learn, and at the same time be of some value to its employer. The term of apprenticeship is usually about five years and the apprentice receives during that time little, if any, pay. Except as regards laundries and the building trades which will be dealt with in more detail later, the Commission was unable to obtain any further information as to the conditions of the employment of children in these industries. Having regard to human nature, the conditions no doubt vary between those incident to slavery and those compatible with humane and proper employment.

3. *Mills, Factories and Similar Places of Industry.*—The commencement age varies with the nature of the employment, but it can be asserted that, generally speaking, the child begins to work in the mill or factory as soon as it is of any economic value to the employer. The Commission has visited a number of mills and similar places of employment, both during the day and at night, and has seen very many children at work who could not have been more than six years of age. The hours of work are generally twelve, with not more than one hour off for a meal. The children frequently have to stand



the whole time they are at work. In many industries day and night work is the rule, there being two shifts of twelve hours each. In most instances the mill or factory stops for one shift at week-ends, and in others, in addition to this, endeavours are made by the employers, but without much success, to ensure that their work people take one day off from work every two weeks. Apart from interruptions and the customary holidays at China New Year, work is continuous. Wages are paid only for working days. In many cases the atmospheric and dust conditions are bad. The sanitary arrangements in the majority of mills and factories leave very much to be desired. The average earnings of a young child are usually not more than twenty silver cents a day. The contract system of employment is common. Under this system the native contractor supplies the requisite labour and is paid on production. This system is obviously open to grave abuse. The Commission heard evidence to the effect that in some instances contractors obtain young children from the country districts, paying the parents \$2 a month for the services of each child. By employing such children in the mills and factories the contractor is able to make a profit of about \$4 a month in respect of each child. These children are frequently most miserably housed and fed. They receive no money and their conditions of life are practically those of slavery.

**Cotton mills:**

With these general observations, the evidence heard as regards the industries which the Commission was able to consider with more particularity may be summarized as follows :—

1. *Cotton Mills.*—Generally speaking, there is little to complain of in the conditions as to space, but sometimes the ventilation is inadequate. The temperature of the air is necessarily slightly above the normal, and there is a certain amount of dust and raw cotton fibre suspended in the atmosphere. In some instances the temperature was found to be higher and the dust conditions worse than were justifiable. The sanitary conditions are not satisfactory. In many cases little attention is paid to the state of the latrines, and the stench near such places is very marked. In normal times night work is the rule. There are two twelve-hour shifts. In some mills there is a cessation from work for one shift at week-ends, but in such cases the last shift is longer than twelve hours. In one instance the length of the shift was given as thirteen and a half hours, and in another fifteen hours. On occasions where there is no night shift the length of the day's work is frequently thirteen hours or even more. In some mills there is a regular one-hour interval for meals, whilst in others the employees take their meals as best they can. The children are mostly employed in the Spinning Department, and in the great majority of cases have to stand the whole time they are at work. It is difficult to state definitely the lowest age at which the children commence work. The Commission, however, saw many children at work who could not have been more than six or seven years of age. Some of these children are not on the pay-roll but are allowed to be brought by their mothers in order that they may be under their care. In many mills the conditions during the night shift are, according to Western ideas, most unusual. Rows of baskets containing babies and children, sleeping or awake as the case may be, lie placed between the rapidly moving and noisy machinery. Young children, who are supposed to be working, but who have been overcome by fatigue or who have taken advantage of the absence of adequate supervision, lie asleep in every corner, some in the open, others hidden in baskets under a covering of raw cotton. The discipline appears to be lax, and those in charge seem to wink at much that goes on in this respect. The Commission noticed that on its advent a warning whistle was given and many of the children were awakened by their immediate neighbours and hurried back to the machines. The contract system of employment above described is common. Many children, however, come with their parents and some independently. The wage of a child in this kind of employment is twenty silver cents a shift. The Commission is satisfied that the general standard of living amongst the class of persons employed in the cotton mills, including the children, has risen greatly by reason of the employment provided. It was stated by one witness that twelve years ago 75 per cent. of these work people had little clothing and were without footwear. There appears to be no shortage in the supply of labour and the Commission is satisfied that there would be no shortage should young children be debarred from employment in the Shanghai district. Efforts are being made in some mills to prevent admission of very young children, and are, at least,

partially successful. There is a great difference to be observed as regards the age of children employed between mills where these efforts are being made and mills where they are not. One Japanese firm, owning many mills in China, provides some elementary educational facilities for the young children of its employees.

2. *Silk Filatures.*—Nearly all the employees in the silk filatures are women and young girls. Generally speaking, one child is employed for every two adults. The children brush the cocoons and prepare them for the reelers by removing the waste and so exposing the silk thread. This operation is performed over basins containing nearly boiling water with which the fingers of the children frequently and necessarily come in contact, thereby becoming roughened and unsightly. The Commission is not satisfied that any permanent injury is caused to the hands of the children by reason of this work. Night work is unusual. The regular hours of work are twelve, usually being from 6 a.m. to 6 p.m. The children, however, have to be at the filatures some little time (15 to 20 minutes) before the hour for commencing work in order to get things ready for the adults.

Silk Filatures.

An hour in the middle of the day is allowed for a meal. In some filatures an interval of about fifteen minutes is also allowed for breakfast. Many of the children employed are very young, being certainly not more than six years of age. It was stated that children under thirteen years of age are not employed in filatures in France and Italy. In the Shanghai district the children almost invariably stand the whole time they are at work, five or six hours at a stretch. Whilst at work many of them develop a peculiar regular and rapid up-and-down movement of the body by means of alternately relaxing and then straightening their knees. Seats are provided in a few filatures but are rarely used probably either because the seats are unadjustable, or because it is easier to perform the work standing. Owing to the presence of the hot water in the basins the temperature of the workroom is always considerably above the normal and the atmosphere is very humid. It was stated that fainting in hot weather is not uncommon. The children earn from twenty to twenty-five silver cents a day. In the main they present a pitiable sight. Their physical condition is poor, and their faces are devoid of any expression of happiness or well-being. They appear to be miserable, both physically and mentally. The adults are given a certain number of cocoons from which they have to produce a certain quantity of silk. Should they fall short of this quantity they are fined. They then frequently revenge themselves by ill-treating the children working under them. The Commission is satisfied that the conditions under which these children are employed are indefensible. The work could be done by adults. There is, however, usually a shortage of labour, and moreover, if adults were employed instead of children, owing to the difference in height, the machinery used would probably have to be reconstructed.

Evidence was heard that in one well-run and apparently prosperous native filature at Hangchow the boiling room is separate from the reeling room, each boiler being managed by four boys of about sixteen years of age. Under this system the softened cocoons after boiling are placed in small wooden containers half full of cold water and then removed to the reeling room. Evidence was also heard that a similar system prevails in Japan. It was stated that this method of operation greatly lessens the number of children employed and does away with many of the undesirable conditions above-mentioned. The question as to whether this system could be introduced successfully into the Shanghai district in place of the present Italian method is of a technical nature concerning which the Commission, upon the materials before it, does not feel qualified to pass an opinion.

3. *Cigarette and Tobacco Factories.*—As far as the Commission was able to ascertain, there are not many very young children employed in these factories. The conditions of employment appear to be better than those in Cotton Mills and Silk Filatures, but full time employment throughout the year, such as has been general in the cotton and silk industries in past years, is not the custom in these industries. The hours of labour are shorter, being nine to ten exclusive of meals. The children usually sit at their work which is light in nature. They earn from twenty to thirty silver cents a day. Night work is not so frequent as in the Cotton Spinning Industry.

Cigarette and Tobacco Factories.

4. *Engineering and Shipbuilding.*—The apprentice system is the rule. Not many children under sixteen are employed in the large foreign-managed

Engineering and Shipbuilding.



works. A certain number of boys between the ages of fourteen and sixteen are employed in cleaning the interior of boilers. It was stated that owing to the small size of some boilers young boys were the only persons who could perform this work. The ordinary working hours are nine exclusive of meal times. Night work is not unusual. Conditions in the smaller native shops are different. As in other industries, the boys are no doubt apprenticed at the earliest age possible having regard to the nature of the work.

Printing Works.

5. *Printing Works*.—Evidence was heard as to the conditions of employment in one large native Printing Works. As a rule, in these works no one under fourteen years of age is admitted. There is a height test for both boys and girls. The girls are employed in light work and the hours of work are not excessive. A nursery is provided where mothers can leave their babies whilst they are at work. These works are a model establishment. There are many small native printing works where, so it was stated, the conditions of work are bad and in which quite young boys are employed.

Match Factories.

6. *Match Factories*.—There are several in the Shanghai District. Certain operations, such as boxing the matches and making up parcels of boxes, can be and are performed by quite young children. As little as nine copper cents is sometimes paid to a child for a day's work. Members of the Commission visited one factory of considerable size. Young children, certainly not more than five years of age, were to be seen working with almost incredible rapidity. Many babies and infants, who could hardly stand, slept or played on the floor whilst their mothers worked. White phosphorus is used in some of these factories, and cases of phosphorus poisoning have been observed. It was stated that the native authorities are making regulations, which are to come into force next year, forbidding the use of white phosphorus, and that there is a possibility that they will be observed. The use of white phosphorus and the importation of matches made with this material have since 1908 been prohibited by, amongst other countries, Great Britain, Denmark, France, Germany, Holland, Italy and Switzerland. Whilst special risk of fire undoubtedly attaches to this industry no precautions, such as the provision of fire prevention screens between the individual workers, mostly very young, engaged in boxing, or ample space between boxing stands, were observed in the factory visited by members of the Commission. From a casual observation of the dwellings adjacent to the factory it was evident that out-work was extensive.

Evidence was heard that such out-work consists of the making of boxes by mothers and their young children. The children are mostly from five to ten years of age. The materials are supplied by the factory through a middleman, and payment is made through him. The starch for pasting on the paper has to be provided by the workers. Payment is made at the rate of nine coppers per thousand for the inside part of the boxes, and seven coppers per thousand for the outside part. It was stated that a woman with two children can finish from two to three thousand parts a day, and it was also stated that the earnings of the husbands in the particular cases enquired into, who were a carpenter, sailor, ricscha coolie and messenger respectively, were not otherwise sufficient to maintain the family.

Laundries.

7. *Laundries*.—There are seventy hand laundries licensed by the Council under Bye-law 34, of which eight are situate outside the Settlement limits. About seventy boys under fifteen years of age are employed by these laundries.

No girls are so employed. The boys apparently start work when about thirteen or fourteen years old. Boys of ten years of age have been found to be employed, and, generally speaking, they all appear to be undersized and much younger than the age given on enquiry. It was stated that some of them look weakly and stunted and that many of them suffer during the winter months from chilblains and resultant sores. It was further stated that the smaller boys are to be seen on occasions carrying greater weights than they can properly manage. The work performed consists chiefly of the collection and delivery of clothing, transport of washing to and from the drying grounds and watching the same, and attending to stoves, cleaning, ironing and doing odd jobs. The hours of work are usually from dawn or early morning until dusk and often until late at night. Half-an-hour or more is allowed for the mid-day meal. The apprentice system is common, \$60 or \$70 being paid to the parents for an apprenticeship period of three years. The boys



are fed and lodged by the employer. They are usually lodged in rooms adjoining the laundries, sleeping on stages, trestle beds or on the floor. They frequently have to eat and sleep in the same room. The laundry business is in the hands of many small owners, who have little or no capital. They rent cheap houses, paying rent from \$7 upwards a month. It is not easy for them to obtain the right kind of premises as property owners are unwilling to let for this purpose, since buildings so used quickly depreciate in value. In wet weather the clothes have to be dried on the laundry premises which become steamy, hot, and most unhealthy. It was stated that the licence conditions most frequently broken were those against sleeping on the premises and squirting from the mouth. The drastic punishment of loss of licence is not often imposed. The witness who gave evidence also stated that in his opinion the boys were no worse off than those employed in other industries. There is only one power laundry in the Shanghai district.

8. *Building Trade*.—The apprentice system is universal, the term of apprenticeship being three to five years. It was stated that the commencement age was eleven. The Commission, however, is satisfied that, as in other industries, many of the children start work at a younger age than this. No girls are employed. The apprentices start work chiefly with the masons and carpenters, carrying loads and learning to saw and plane. The hours of work are usually eight to ten a day. In winter half an hour is allowed for a mid-day meal, in hot weather two hours. The contract system of employment is the rule. It was stated that in the Shanghai district there were about 20,000 apprentices in this trade, most of whom live with sub-contractors away from their parents. It was also stated that the food given to the apprentices by the contractors is frequently poor, and that it is worse when they are not being employed.

The Commission also heard evidence with regard to the question of the protection of workers against injury from fire. It was stated that on the whole conditions were very bad. In the case of new large buildings before construction, plans have to be submitted to the Chief Officer of the Fire Brigade for his approval. After completion, however, there is no power to force the occupier to keep them in a safe condition in this respect. Fire escapes, staircases and other means of egress are frequently kept blocked with material and doors are barred. Many old buildings are in a very unsafe condition. Officers of the Fire Brigade make tours of inspection from time to time and attention is called to dangerous conditions, but very little notice is taken. It was further stated that, given the necessary powers, the enforcement of regulations would not necessitate any large increase in the Staff of the Brigade.

## PART II.

Having taken all available evidence, the Commission entered upon the most difficult part of its task, namely, the consideration of the question as to what recommendations it should make to the Council. The Commission throughout its deliberations had to keep in mind the terms of the reference to it which expressly stated that regard had to be had to practical considerations and to local conditions generally.

The present International position with regard to the regulation of the employment of children and young persons may be stated briefly as follows:—

At the International Labour Conference of the League of Nations held at Washington in October, 1919, a number of draft conventions and recommendations were drawn up dealing with the following amongst other matters.

1. The limitation of the hours of work of all persons (other than those holding managerial or confidential positions) in industrial undertakings to eight in the day and 48 in the week. China was expressly excluded from the operation of this Convention, whilst in the case of India, a sixty hour week was adopted for all workers in industries covered by the Factory Acts administered by the Government, and in mines and certain branches of railway work. Further consideration of this question so far as India and China were concerned was left for a future meeting of the General Conference. In the application of the Convention to Japan a modification was adopted whereby the actual working hours of persons of fifteen years of age (sixteen from July 1, 1925) or older can be increased in the case of the raw silk industry to sixty hours, and in the case of other industrial undertakings to fifty-seven hours in the week.

Preliminary  
Observations.

Present Interna-  
tional Position.

2.—The fixing of fourteen years as the minimum age for the employment of children in industrial undertakings, other than undertakings in which only members of the same family are employed. To facilitate the enforcement of this provision, the Convention stipulated that every employer should be required to keep a register of all persons under the age of sixteen years employed by him and the dates of their births. In the case of Japan the Convention provided that children over twelve might be admitted into employment if they had finished the course in the Elementary School. India was expressly excluded from the provisions of the Convention, except that the employment of children under twelve was prohibited in factories working with power and employing more than ten persons, and in mines and quarries and the transport services except transport by hand.

3.—The prohibition (with certain exceptions in the case of young persons over the age of sixteen in the event of sudden emergency) of night work under the age of eighteen years. In the case of Japan, the Convention, until the 1st of July, 1925, was to apply only to young persons under fifteen years of age, and thereafter to those under sixteen years of age. As regards India the Convention was not to apply to young male persons over fourteen years of age.

4.—The exclusion of young persons under the age of eighteen years from employment in certain processes involving the use of lead, and the prohibition of the employment of such young persons in processes involving the use of lead compounds other than subject to certain conditions as to ventilation, cleanliness, medical examination and compensation in case of poisoning.

5.—The adoption of the Berne International Conference of 1906 prohibiting the use of white phosphorus in the manufacture of matches.

Although it was suggested at the Conference that China should be asked to accept the principle of the protection of labour by factory legislation, and that the Governments having jurisdiction in Settlements and leased territories outside Chinese jurisdiction should also adopt this principle, the question was postponed for consideration at a future Conference. It is evident that the Conference recognized that circumstances made it impossible for China immediately to conform to Western standards.

Certain of these Conventions and recommendations have been adopted by a number of countries and are therein enforced. China, whilst not having up to the present time adopted any of them, has promulgated certain provisional Regulations (see Appendix No. IV), which, in so far as they touch the employment of children, will be dealt with later.

Position in  
Hongkong.

In Hongkong the employment of children is regulated by the Industrial Employment of Children Ordinance, 1922, (see Appendix No. III), which was passed as a result of the Report of the Industrial Employment of Children Commission appointed by the Governor in Council in March, 1921. Briefly stated the Ordinance and the Regulations made thereunder prohibit:—

- (a) The employment of children (defined as persons under fifteen years of age) in boiler chipping, the manufacture of fire works and glass-making, all of which are declared to be dangerous trades.
- (b) The employment of children for any period between 7 p.m. and 7 a.m. or during the day for more than five hours continuously. It should here be noted that the Ordinance also provides that between any such spell of work and the next one there must be an interval of relaxation of not less than one hour, and that every child shall be allowed one day's rest in every seven days.
- (c) The employment of children under the age of ten years in any factory.
- (d) The employment of children under the age of twelve years in carrying coal or building material or debris or any unreasonably heavy weight.

The Ordinance also provides for the appointment of an Official Protector of Juvenile Labour with the right to search industrial premises in which children are believed to be employed, and for the keeping by every employer of a running record of all children employed in his factory. Further, in any prosecution under the Ordinance, until the contrary is proved, the person, the subject matter of the charge, is assumed to be a child or under a particular age if he or she so appears to the Magistrate. This last provision meets the difficulty of proof of age, which arises owing to the absence of birth registration.

The special difficulties in the way of the regulation of child labour in the foreign Settlement as they presented themselves to the Commission may be broadly stated as follows :—

Shanghai Foreign Settlement.—  
Special Difficulties

1.—The absence of a Central Government with power to enforce its decrees throughout the country.

There is no doubt that given such government there would be little difficulty in the way of the Council obtaining the necessary powers to enforce within the Settlement any reasonable industrial legislation enforced outside. In the opinion of the Commission this difficulty is the most serious of all, since it renders it necessary to deal with the Settlement as if it were in the nature of a watertight compartment. Consequently the question as to how far, if at all, it is practicable to regulate or restrict the employment of children within the Settlement, without injuring or unduly interfering with the industries employing them, which industries have to compete with those outside, is one which has to be seriously considered by all those who approach the present problem. In this connexion the Commission invited an expression of opinion from the Cotton Mill Owners' Association of China and the Chinese Cotton Mill Owners' Association, and received the following replies :—

*From the Cotton Mill Owners' Association of China :—*

- (1) *That this Association would welcome regulations limiting the employment of children below a reasonable age, provided these regulations were applicable to and were rigidly enforced in the adjoining provinces of Chekiang and Kiangsu, or even Kiangsu only.*
- (2) *That this Association considers "a reasonable age" referred to in (1) above to be 12 years (foreign count) for the first 2 years, and thereafter 13.*
- (3) *That in the event of no regulations applicable to the surrounding districts being possible this Association would not oppose regulations limiting the age of employment inside the Settlement to 9 years (foreign count).*

*From the Chinese Cotton Mill Owners' Association :—*

- (1) *That the Association would welcome regulations prohibiting the employment of children below the full age of 12 provided similar regulations were made applicable and rigidly enforced outside the Settlement limit—say, at least in the provinces of Kiangsu and Chekiang.*
- (2) *a. That the Association would regard the enforcement of prohibition in the Settlement only as an augmentation to the disadvantages already existing at which the mills in the Settlement are working, as the prohibition when enforced would drive away from the Settlement not only all the workers affected but also their parents to obtain work outside, and would result in a shortage of labour in the Settlement where the mills in addition to paying higher taxes and dearer raw cotton than those in the interior would have to pay still higher wages in order to attract labour.*  
*b. That in the opinion of the Association the employment of children by mills is a matter of charitable nature towards the parent workers ; for so long as their children are employed it adds to their income, relieving the burden of supporting their children, and also removes their anxiety for the safety of their children who, from the parents' point of view, are safer and more comfortable in the mills than they would be if left to run wild on the street.*  
*c. That many mills have tried to eliminate small children from employment but they have met with little success owing to the pitiful requests by the parents of the children.*

Further, at a meeting held on May 1, 1924, at Shanghai at which, it is stated, a number of labour groups were represented a resolution was passed that there should be no employment of children under fourteen years of age (presumably Chinese count) and that an eight hours system should be worked for.



2.—The circumstance that Shanghai is a treaty port and that the foreign Settlement is managed and controlled by a Municipal Council, whose powers are strictly limited by the terms of the Land Regulations and the Bye-laws made thereunder.

By virtue of Bye-law 34 certain occupations can only be carried on under licence from the Council, and there is no doubt the Council could, under this Bye-law, prohibit or regulate the employment of children in such of these occupations as are obviously unsuitable and harmful to them, but the Commission is advised that such action would have to be justified by the nature of the particular occupation, and that this Bye-law does not empower the Council to prohibit or regulate such employment simply on general humanitarian grounds. Although, apart from this Bye-law, the Council has no present power of prohibiting or regulating the employment of children below any particular age or in any particular industry, the Commission is advised that the necessary power could be obtained by means of a new Bye-law. The Commission is further advised that any such new Bye-law would involve the approval of a majority of the Consuls and Ministers of the Foreign Powers having treaties with China and the Ratepayers in Special Meeting assembled. Such Foreign Powers and the various countries of which the Ratepayers are respectively citizens, or the great majority of them, are, however, in agreement with the principles of industrial regulation as laid down by the Washington Conference, and it is to be hoped that no difficulty would be experienced by the Council should it endeavour to obtain the powers required to enable it to take the first step towards what can hardly be considered as other than a necessary amelioration of present industrial conditions as far as the employment of children is concerned.

3.—Absence of birth registration and the consequent difficulty of proof of the age of children.

It was suggested by certain of the medical witnesses that a height, or height and weight standard, should be fixed for ascertaining age. This suggestion and the alternative method adopted in Hongkong will be dealt with later.

4.—Absence of educational facilities.

Before compulsory education was adopted in England this difficulty was met by the half-time system and by requiring the employer to see and prove that any child he desired to employ did in fact attend school, but the Commission is of opinion that the establishment of this system is at present impracticable in the Foreign Settlement.

5.—The need for the provision and maintenance of a specially trained Inspectorate.

This could be gradually met, and involves merely the provision of funds and judicious selection, a nucleus of trained persons being obtainable from the countries now having factory legislation.

6.—The circumstance that, owing to the present economic and social conditions of China, children are sent to work by their parents at the earliest age possible.

The Commission realises that this is a serious difficulty but it is one that was present in most countries in the early days of factory legislation, and one which must necessarily become less as China progresses industrially.

The problem of the protection of child labour has—whether fortunately or unfortunately—arisen in a concentrated form in the Foreign Settlement of Shanghai, that is to say, in a place where, as shown above, the special and peculiar difficulties in the way of regulation dominate the situation, but in spite of these difficulties, the Commission is of opinion that the problem is one which must be faced and dealt with as far as is possible.

Peking Provisional Regulations.

In March, 1923, the Peking Government promulgated certain regulations in connexion with labour in factories. These regulations are at present provisional only, and have not the force of law. In his address to the Commission at its first meeting, the then Chairman of the Council expressed the opinion that it would be advisable for the Commission, in recommending any regulations, to take as a basis the regulations above mentioned with a view to securing uniformity within and without the limits of the foreign Settlement. The Commission formed the same opinion and decided to consider these regulations and, in so far as it thought they were reasonably practicable, either as they stood or as they could be amended, to recommend to the Council, in the event

of their being enforced at any time outside the Settlement, to seek power to enforce them within the Settlement, and the Commission came to the conclusion that enforcement in the surrounding provinces of Kiangsu and Chekiang, or even in the province of Kiangsu only, would be sufficient enforcement for this purpose.

The provisional regulations consist of 28 Sections. Sections, 2, 10 to 17 inclusive, 19 and 26 appeared to the Commission to be either outside the scope of its enquiry or, in view of its conclusions, immaterial, and were not further considered. The remaining Sections, as translated into English, and the conclusions arrived at by the Commission are as follows :—

Peking  
Provisional  
Regulations—  
Commission's  
Conclusions.

*"Section 1. This Order applies to factories under the following heads :—*

- a. Factories in which the number of labourers employed is over 100.*
- b. Factories in which work of an extra hazardous character, or which is detrimental to public health, is carried on.*

*(Note). A further order will be promulgated in due course with regard to factories in which this Order does not apply."*

In the opinion of the Commission the figure 100 is far too high. It is essential that smaller industrial premises should be covered, as there is no doubt that the conditions of labour therein are in some respects much worse than those in the larger and more modern factories. In the opinion of the Commission ten is the most suitable figure. If this figure is adopted Sub-section "b" becomes unnecessary. The expression "factory" requires definition, and the regulations should be made to cover outside work such as building and transport operations.

*"Section 3. The proprietor of a factory shall not employ boys under the age of ten or girls under the age of twelve."*

The Commission is of opinion that no distinction should be made between the sexes. The age should be first fixed at ten and should then be raised one year every two years until fourteen is reached.

*"Section 4. Boys under seventeen and girls under eighteen are regarded as juveniles."*

The view of the Commission is that in the absence of a general code of industrial legislation regulation of employment beyond the age of fourteen is at the present moment impracticable.

*"Section 5. Juveniles shall be given tasks of an easy and light nature."*

This is too vague. The employment of children under fourteen years of age should be forbidden in any dangerous or hazardous place, or at any work likely seriously to injure body or health. In the case of dangerous or hazardous premises there should be power to close the same until made safe.

*"Section 6. Juveniles shall not be required to work exclusive of recesses, for more than eight hours per day, and adults shall not be required to work exclusive of intervals for rest for more than ten hours a day."*

In the opinion of the Commission children under the age of fourteen years should not be employed for more than nine hours in any period of 24 hours, or for more than five hours continuously.

*"Section 7. Proprietors of factories must not compel juveniles to work between the hours of 8 p.m. and 4 a.m."*

In the opinion of the Commission no child under fourteen years of age should be employed on night work, and the night period should be fixed as between the hours of 8 p.m. and 5 a.m.

*"Section 8. Not less than two full days in every month shall be granted to adults for rest, and juveniles must be given not less than three days rest every month."*

*(Note). In emergencies, or in cases of accident, or in times of urgency this rule may be temporarily suspended, but all such cases must be notified to the local authorities within three days from their occurrence."*

Every child under fourteen years of age should be given a weekly rest of 24 hours. The Commission does not agree that any suspension of this rule should be allowed.

*"Section 9. All labourers must be given not less than one recess each day, and such recesses must be for not less than one hour."*

The Commission is of opinion that in the case of children under the age of fourteen the interval of relaxation between any spell of five hours continuous



work and the next spell of work should be not less than one hour, and that the interval of relaxation after any spell of work of less than five hours duration should be of reasonable duration, having regard to all the circumstances.

*"Section 18. Owners of factories shall provide, at their own expense, suitable educational facilities for their juvenile employes, and also for any of their adult employes who have been thrown out of work."*

*(Note). Such free tuition shall be given for not less than ten hours a week for juveniles, and, for adults who have been thrown out of work, free tuition must be given for not less than six hours every week."*

Whilst the question of the education of children is outside the scope of the Commission's enquiry it desires to put on record its agreement with the suggestion made by the recent General Education Commission, namely, that the co-operation of mill and factory owners should be sought by the Council for the establishment of educational facilities for :

- (a) Children who are too young to go to work in the mills where the parents themselves are at work ;
- (b) And, if possible, children employed in the mills ; which might be accomplished either by means of night schools, or, in the event of the "half-time" system being introduced as regards children, schools to which this class of children would go as "half-timers," i.e., work in the morning and school in the afternoon and vice versa or such other system as may be found practicable.

*"Section 21. Juveniles and women must not be allowed in the engine rooms, or other places where machinery is in motion, for the purpose of scavenging, oiling or for doing repair work, or to do any hazardous work."*

*"Section 22. Juveniles shall not be ordered to do any work which is connected with the handling of explosives or noxious drugs."*

*"Section 24. In all factories precautionary measures must be taken against danger to the life and health of employees, and the local authorities have the right to send an officer to make periodical investigations into these matters."*

*"Section 25. Any factory whose premises and adjoining structures are found by the local authorities to be dangerous to health, or to the public weal the proprietor of such factory must make the necessary alterations in accordance with the local authorities orders."*

*(Note). With reference to the above, when ordered by the local authorities, the whole or any part of the buildings may be condemned and shall not be used."*

The matters dealt with by Sections 21 to 25 above-mentioned are covered by the Commission's conclusions under Section 5.

Sections 27 and 28 deal with responsibility for observance and date when the Regulations are to come into force and need not be further considered.

Any Regulations should provide for full power of inspection and the imposition of adequate penalties in case of breach, and the Regulations are defective in this respect. Further, the difficulty of proof of age is not dealt with. As mentioned above this difficulty can be met either :—

- (a) By fixing a standard of height or height and weight, or
- (b) By providing, as in the Hongkong Ordinance, that in any prosecution until the contrary is proved, the child, the subject matter of the charge is to be assumed to be under the particular age if he or she so appears to the sitting Magistrate.

The objection to method "a" is that any such standard must of necessity be to a great extent purely artificial and have a considerable margin of error and its adoption would render it necessary for employers frequently to measure or measure and weigh, as the case might be, a considerable number of their employees. On the other hand, having regard to the different jurisdictions in the Foreign Settlement, the adoption of method "b" might result in the erection of many and diverse standards. On the whole, however, the majority of the Commission is in favour of method "b."

Subject to the Regulations being re-drafted by the Chinese authorities so as substantially to meet the objections and suggestions set out above, the Commission recommends that in the event of their being strictly enforced in the provinces of Kiangsu and Chekiang, or even in the province of Kiangsu only, the Council should seek power to enforce them within the limits of the Foreign Settlement of Shanghai.

The Commission is further of opinion that any real and effective step towards the amelioration of the present conditions of child labour within the



practicable limits above indicated, which may be made by the Chinese authorities in the above-mentioned provinces or province, should, if the necessary power can be obtained, forthwith be met by similar action on the part of the Council.

"It should here be noted that on May 20, 1924, there was published in the "Shun Pao" Newspaper an ordinance from the Civil Governor of Kiangsu addressed to the Industrial Bureau which recognised that the Peking Provisional Regulations were imperfect in that they contain no definite provision for inspection, and suggested that China should also organize a Commission to sit at Shanghai with a view to bringing about conformity between any regulations affecting Chinese and Foreign factories.

### PART III.

As there is, however, at the present moment no regulation of labour in any part of China, the Commission, in conclusion, passed to the consideration of the extremely difficult question as to how far, if at all, the Council ought, in view of this circumstance, to attempt to prohibit or regulate child labour within the limits of the Foreign Settlement of Shanghai.

Preliminary  
Observations.

As far as the Commission is aware, the question of the possibility or advisability of prohibition or regulation within one particular industrial area to the exclusion of the rest of the State or country in which the same is situated has hitherto never arisen, and the fact that the Foreign Settlement does not even comprise the whole of the particular industrial area of Shanghai in which it is situated obviously does not lessen the difficulty of the present problem. Many industries within the Settlement have of necessity to compete with similar industries which, whilst situated outside the Settlement, are within the same industrial area, which draw upon the same market for their labour, and which are organised on similar lines.

It is obvious that any action which might have the effect of raising the cost of production within the Settlement would be not only unfair to industries competing with those outside, but would be also unwise from the more general point of view, since it would tend to the subsidization outside the Settlement of the very evils which were being attacked within. Moreover, in certain instances, particularly in the cotton industry, the same concern may have mills and factories both inside and outside the Settlement, and any regulation which did not take into account this circumstance, and the difficulties which obviously might arise therefrom, would be most unsatisfactory. Further, the probability that prohibition or regulation within the Settlement, unless very carefully conceived, would merely result in the driving of the children and their parents into the employment of entirely uncontrolled industries outside, must always be borne in mind. Again, owing to the present economic and social conditions in China any immediate drastic prohibition of the employment of children would be in the nature of a revolution and would seriously impoverish many homes. Lastly, the fact that there is in China at present no system of education for children of the working classes must not be lost sight of. In all countries hitherto the history of early industrial regulation has also been the history of early elementary education. The provision of means for the education of the children has grown up side by side with the prohibition or other regulation of their employment.

It was only after a very careful and lengthy consideration of the factors set out above that the Commission arrived at their conclusions upon this difficult and serious problem, and it desires to put on record that its recommendations are to be considered as conditioned by these factors, and that, in its opinion, the standard to be aimed at and to be adopted at the earliest practicable moment is that set up by the Washington Conference.

Commission's  
Conclusion and  
Recommendations.

The Commission's conclusions and recommendations are as follows:—

1.—The Commission is of opinion that it is practicable to prohibit within the Settlement limits the employment of children under the age of ten years, rising to twelve years within a period of four years. The Commission is satisfied that such prohibition will not cause financial injury or serious inconvenience to any industry. The evidence given before the Commission was such as to drive it to the conclusion that, if the continued existence of any particular industry were dependent upon the continuance of the employment of children under ten years of age, then the disappearance of such industry from the Foreign Settlement could be regarded with equanimity. In the event of

Minimum age.

such prohibition, the problem of the education of unemployed young children will naturally become more serious, but the Commission hopes that at the same time the solution of this problem will be thereby hastened.

The Commission recommends that the Council should forthwith seek power to make and enforce regulations prohibiting the employment in factories and Industrial undertakings of children under ten years of age, rising to twelve years within four years from the date when the regulations come into force.

Hours of Employment.

2.—The question of the regulation of the hours of the employment of children is, in view of the existing circumstances, one of considerable difficulty. Whilst there is no doubt that in China neither children nor adults work at the same pressure as in Western countries, the Commission is satisfied that the hours worked in many industries by children under fourteen years of age are so excessive as seriously to effect their health, and can and should be lessened. In normal times many of the important industrial concerns in the Settlement which employ children work on the two twelve-hour shift system, and the Commission is satisfied that a limitation of the hours of employment of children to a length of time less than the normal length of the shift would have the result of preventing the employment of such children in such industries even by day, and the Commission is of opinion that any regulation, which would have this result, would be both unfair to the particular concerns and unwise from a more general point of view. The Commission is, however, satisfied that there is no good reason why during the course of the shifts an interval of one hour for food and rest should not be allowed and made compulsory.

The Commission recommends that the Council should seek power to prohibit the employment in factories and industrial undertakings of children under fourteen years of age for a longer period than twelve hours in any period of twenty-four hours, such period of twelve hours to include a compulsory rest of one hour.

3.—While it cannot be disputed that night work for young children is highly injurious, the Commission reluctantly came to the conclusion that it is impracticable immediately to prohibit night work for children within the limits of the Foreign Settlement while there is no limitation outside. Industries at present employing labour at night are mostly those organised upon the two-shift system, and the Commission is satisfied that it would be commercially impracticable for such industries to employ children by day, if they could not also employ such children on the turn of the shift at night. Moreover, the result of such prohibition might be that children who were just over the age fixed would be employed continuously at night which, in the opinion of the Commission, would be very undesirable. If the recommendation contained in paragraph 1 above is acted upon, the result will be that in four years time there will be no child under twelve years of age permitted to be employed either by day or by night within the limits of the Foreign Settlement, a result which will constitute a far-reaching improvement on the present conditions, and which will, it is hoped, be merely a step towards the attainment of a position similar to that reached by the Western countries.

In view of the above, the Commission does not recommend that the Council should immediately seek power to enforce the prohibition of employment at night of children who can be employed by day. The Commission, however, considers night work for young children such a serious evil that it is of opinion that this question should in any event be further considered by the Council at the end of a period of four years.

Rest day.

4.—As regards the question of a rest day, the Commission is of opinion that, as a step towards the standard set up at the Washington Conference of one whole day's rest in every seven days, it would be practicable to make it compulsory for children under fourteen years of age employed in the Settlement to be given at least one day's rest in every fourteen days. That is the position at the present moment in Japan. In practically all the large mills and factories the employees get a day's rest consisting of twenty to twenty-four hours every seven days, but employment is probably more continuous in many of the smaller native industries.

The Commission recommends that the Council should seek power to make and enforce regulations under which every child under fourteen years of age, employed in factories and industrial undertakings in the Settlement, should be given twenty-four hours continuous rest from work in at least every fourteen days.



5.—The Commission sees no reason why it should not be the legal duty of every employer to see that the children employed by him are not exposed to serious risk. Any regulations made under this head should cover risk of injury from dangerous unguarded machinery and from fire owing to lack of proper means of egress or otherwise, and also danger of injury to health, the result of insanitary conditions.

Protection  
against Injury.

The Commission recommends that the Council should seek power to prohibit the employment of children under fourteen years of age in factories and industrial undertakings at any dangerous unguarded machine, in any dangerous or hazardous place, or at any work likely seriously to injure body or health, and to close any dangerous or hazardous premises where such children are employed until they are made safe.

6.—As regards proof of age, this difficulty can be met as stated above either (a) by fixing a standard of height, or height and weight, or (b) providing, as in the Hongkong Ordinance, that in any prosecution, until the contrary is proved, the child, the subject matter of the charge, is to be assumed to be under the particular age if he or she so appears to the sitting Magistrate.

Proof of Age.

Whilst the majority of the Commission is in favour of method (b), the Commission recommends that the Council should adopt whichever of these two methods is the more suitable from an administrative point of view.

7.—It will be necessary for any regulations to contain a definition of the expressions "factory" and "industrial undertaking" respectively, or of such other terms as may be used therein to describe the employments covered. In the opinion of the Commission it is essential that the smaller native industries and the building, transport, and similar out-of-door occupations should be brought within any regulations.

Definitions.

The Commission recommends that :—

- (a) The expression "factory" should be defined so as to cover premises in which ten or more persons are employed in manual work.
- (b) The expression "industrial undertaking" should be defined so as to cover out-of-door occupations, such as building, construction work, and transport, but should not include any agricultural undertaking.

8.—It cannot be too often stated that the successful enforcement of any regulations must depend to a great extent upon the imposition of adequate punishment in case of breach, and upon frequent inspection by trained men and women.

Inspection and  
Penalties.

The Commission recommends that :—

- (a) Any regulations should provide for the imposition not only of substantial fines but also, in case of repeated wilful offences, for punishment by imprisonment.
- (b) The Council should provide an adequate staff of trained men and women for carrying out the duties of inspection under the regulations.

The Commission fully realises the weight of the burden which the Council will take upon its shoulders, if having first obtained the necessary power it acts upon the Commission's recommendations. Few people outside the Settlement appreciate or even attempt to understand the difficult and peculiar nature of the task performed by the Council, with its strictly limited powers in the administration of the densely and diversely populated area within its jurisdiction. Reform of present industrial conditions and the consequent amelioration of the lot of the Chinese child worker cannot be achieved unless it receives the moral and active support not only of the foreign residents, but of the vastly greater body of the Chinese public.

Concluding  
Observations.

*Dated the ninth day of July, 1924.*

H. LIPSON WARD, *Chairman, Barrister-at-law.*

ADELAIDE M. ANDERSON, D.B.E., *Formerly H.B.M. Principal Lady Inspector of Factories.*

J. S. S. COOPER, M.A., B.Sc., *Vice-Chairman, Director, ARNHOLD & Co., LTD.*

EDWIN J. CORNFOT, *Silk Merchant, DYCE & co.*

MARY A. DINGMAN, *Industrial Secretary, World's Y.W.C.A.*

R. J. McNICOL, *Manager of Messrs. Jardine, Matheson, & Co., Ltd. Cotton Mills Department, Shanghai.*

G. OKADA, *Manager, Naigai Wata Kaisha.*

MAYLING SOONG, *Secretary of Joint Committee of Women's Clubs in Shanghai.*

MARY STONE, M.D.



## LIST OF MILLS AND FACTORIES.

List of Mills and Factories in the Shanghai Foreign Settlement, and Chapei and Pootung, showing Nationality and Number of Adults and Children Employed.

*N.B.—The figures given were found to be approximate only and in some instances inaccurate. In certain cases, particularly with reference to silk filatures, the nationality given is no doubt merely that of a foreign nominee, lending his name for the purpose of obtaining foreign registration. The evidence given before the Commission was to the effect that there was little, if any, foreign capital invested in silk filatures.*

## HARBIN ROAD DISTRICT.

Name and Address.	Nationality.	No. of Male Em- ployees over 12 years of age	No. of Female Em- ployees over 12 years of age	No. of Male Em- ployees under 12 years of age	No. of Female Em- ployees under 12 years of age
Yui Ching Silk Filature, 1 Wuchow Road .. ..	Chinese	—	500	—	—
Tung Wei Silk Filature, 1 Wuchow Road .. ..	"	—	500	—	—
Yui Foong Silk Filature, 2 Wuchow Road .. ..	"	—	580	—	—
Ching Yung Silk Filature, 399 Chaoufoong Road ..	"	120	200	—	3
Tien Chong Silk Filature (now called Ziang Woo Silk Filature), 80 Tung Chow Road .. ..	"	—	150	—	—
Chung Yih Tinfoil Factory, 1009A Wuchow Road ..	"	80	60	—	—
Yui Lung Cotton Thread Factory, 1010 Wuchow Road ..	"	15	10	—	—
Tsung Mai Tinfoil Factory, 398 Wuchow Road ..	"	74	168	—	—
Shanghai Building Co.'s Saw Mill, 9 Thorne Road ..	American	175	—	—	—
Shanghai Ice & Cold Storage Co., Ltd., Works, 8 Thorne Road .. ..	British	40	—	—	—
B. A. T. Cigarette Factory, 56 Dixwell Road .. ..	"	200	380	—	—
Tsok An Stocking Factory, 1045/8 E. Yuhang Road ..	Portuguese	75	80	—	—
Woo Tseu Tinfoil Factory, 890 E. Yuhang Road ..	Chinese	40	100	—	—
Lou Zung Kee Cigar Factory, 787 E. Yuhang Road ..	"	7	54	—	—
Shanghai Tinfoil Factory, 1009A Wuchow Road ..	"	100	170	—	80
Fong Yuen Carpet Factory, 243 Juikun Road .. ..	"	150	—	—	—
Yah Kee Glass Factory, 81 Juikun Road .. ..	Japanese	140	—	—	—
Yah Zung Safe Factory, 404 Urga Road .. ..	Chinese	90	—	—	—
J. F. Woodworth Engineering Works, 1045 E. Yuhang Road .. ..	American	25	—	—	—
Zung Hyung Cotton Ginning Mill, 302/7 Hailar Road ..	Chinese	30	44	—	—
Van Hyung Iron Founders, 273 Hailar Road .. ..	"	26	—	—	—
Yah Yoong Iron Founders, 272 Hailar Road .. ..	"	21	—	—	—
Ziang Fah Iron Founders, 272 Hailar Road .. ..	"	50	—	—	—
Mo Nyoen Zung Engineering Works, 271 Hailar Road ..	"	34	—	—	—
Hyung Tai Iron Founders, 270 Hailar Road .. ..	"	25	—	—	—
Hwa Tung Engineering & Electric Works, 738 Dixwell Road .. ..	"	63	—	—	—
Yoong Tai Iron Founders, 169 E. Yuhang Road .. ..	"	35	—	—	—
Yah Woo Cotton Thread Factory, 268 Hailar Road ..	"	23	14	—	—
Yah Woo Cotton Thread Factory, 258 Hailar Road ..	"	22	16	—	—
Ts Jung Engineering Works, 401 Chaoufoong Road ..	"	38	—	—	—
Foh Chong Engineering Works, 401 Chaoufoong Road ..	"	16	—	—	—
Tuh Chong Engineering Works, 44 Tungchow Road ..	"	10	—	—	—
Yah Chong Ziang Engineering Works, 222 Tungchow Road	"	13	—	—	—
Hyung Yueh Engineering Works, 47 Yochow Road ..	"	20	—	—	—
Hwa Chong Electric & Engineering Works, 295 Sawgin Road .. ..	"	12	—	—	—
The Asiatic Rubber Factory, 296 Mukden Road .. ..	Japanese	14	10	—	—
Yoong Chong Iron Foundry, 156 Tung Sah Ka .. ..	Chinese	16	—	—	—
Kyung Tsaung Engineering Works, 1074/5 Sawgin Road ..	"	12	—	—	—
Foong Tai Engineering Works, 1031 Sawgin .. ..	"	30	—	—	—
Kung Lee Engineering Works, 123 Sawgin Road .. ..	"	12	—	—	—
Tsing Yih Engineering Works, 10 Sawgin Road .. ..	"	8	—	—	—
Yi Tai Engineering Works, 1289 Sawgin Road .. ..	"	14	—	—	—
Yuen Chong Engineering Works, 13 E. Yuhang Road ..	"	97	—	—	—

Name and Address.	Nationality.	No. of Male Em- ployees over 12 years of age	No. of Female Em- ployees over 12 years of age	No. of Male Em- ployees under 12 years of age	No. of Female Em- ployees under 12 years of age
Zung Ts Sing Engineering Works, 3158 Point Road	Chinese	13	—	—	—
Lee Da Engineering Works, 411 Point Road	"	21	—	—	—
Ing Yoong Zung Iron Foundry, 412 Point Road	"	11	—	—	—
Kyung Chong Iron Works, 3093 Point Road	"	36	—	—	—
Da Sung Engineering Works, 3091 Point Road	"	9	—	—	—
Zen Chong Zung Engineering Works, 3023 Point Road	"	22	—	—	—
Wong Yuhn Kee Iron Foundry, 280 Point Road	"	14	—	—	—
Kawakita Co., 167 E. Yalu Road	Japanese	23	—	—	—
Tsing Kung Engineering Works, 141/5 E. Yalu Road	Chinese	24	—	—	—
Chang Lui Engineering Works, 798 E. Yalu Road	"	34	—	—	—
Hyung Kee Iron Foundry, 799 E. Yalu Road	"	29	—	—	—
Zen Chong Ziang Iron Foundry, 1185 Wuchow Road	"	22	—	—	—
The Shanghai Zeh Zeh Sin Wen Zo (Printing Dept.) 10 Wuchow Road	Japanese	66	—	—	—
Zung Fok Chong Engineering Works, 560 Sinkeepang Road	Chinese	22	—	—	—
Tsang Mei Chong Engineering Works, 424 Sinkeepang Road	"	17	—	—	—
Yah Tai Chong Iron Foundry, 288 Urga Road	"	22	—	—	—
Hoong Tai Engineering Works, 167 Urga Road	"	12	—	—	—
Hang Hyung Chong Iron Founders, 149 Urga Road	"	50	—	—	—
Nyoen Hyung Chong Engineering Works, 163/4 Urga Road	"	20	—	—	—
Van Tai Engineering Works, 352 Urga Road	"	15	—	—	—
Kyeu Da Engineering Works, 406 Urga Road	"	16	—	—	—
Hoong Hyung Engineering Works, 407 Urga Road	"	17	—	—	—
Zung Ping Kee Engineering Works, 409 Urga Road	"	39	—	—	—
Hyung Chong Engineering Works, 477 Urga Road	"	28	—	—	—
Tai Chong Iron Foundry, 460 Urga Road	"	22	—	—	—
Kung Sing Chong Engineering Works, 488 Urga Road	"	14	—	—	—
Yoeh Hyung Kee Engineering Works, 491 Urga Road	"	10	—	—	—
Foh Chong Ziang Engineering Works, 4 Urga Road	"	18	—	—	—
Kung Zung Chong Iron Foundry, 490 Urga Road	"	19	—	—	—
Zuh Sing Printing Co., 247 Urga Road	"	38	—	—	—

## WAYSIDE DISTRICT.

Liddell Bros., Ltd., 29 Yangtsepoo Road	British	80	400	—	—
Pao Yuen Paper Factory, 32 Yangtsepoo Road	Chinese	120	4	—	—
Oriental Cotton Mill, 36 Yangtsepoo Road	British	560	1,350	110	—
New Engineering Works, 37-45 Yangtsepoo Road	"	1,570	—	—	—
Laou Kung Mow Cotton Mill, 40 Yantsepoo Road	"	300	1,100	300	250
Tsing Chong Ziang Engineering Works, 609 Point Road	Chinese	40	—	—	—
Yah Zung Iron Works, 610 Point Road	"	34	—	—	—
Wu Zung Shing Iron Works, 633 Point Road	"	30	—	—	—
Tuh Tai Engineering Works, 734 Point Road	"	80	—	—	—
Wah Sun Electrical Engineering Works, 2861 Point Road	"	90	—	—	—
Yah Lee Iron Works, 2863 Point Road	"	42	—	—	—
Ching Wei Cotton Mill, 31 Yochow Road	"	110	270	—	—
Ching Yen Silk Godown, 121 Yochow Road	"	38	—	—	—
Tsung Tong Engineering Works, 148 Yochow Road	"	35	—	—	—
Zung Wu Iron Works, 214 Yochow Road	"	50	—	—	—
Ching Wah Lead-foil, 219 Yochow Road	"	150	450	—	—
Foh Lee Hat Maker, 230 Yochow Road	"	12	10	—	—
Tuh Sing Engineering Works, 256/7 Yochow Road	"	42	—	—	—
Yuen Chong Lead-foil Factory, 280 Yochow Road	"	60	130	—	—
Nie Lee Printing Co., 281/2 Yochow Road	"	90	—	—	—
Hop Lee Iron Works, 31/2 Yuenfong Road	"	23	—	—	—
Ling Bel Kee Iron Works, 34 Yuenfong Road	"	34	—	—	—
Hop Chong Iron Works, 74 Yuenfong Road	"	38	—	—	—
Kung Yih Yah Kee Engineering Works, 1206 Sinkeepang Road	"	20	—	—	—
Scott, Harding & Co., 1338 Sinkeepang Road	British	15	—	—	—
Van Chong Engineering Works, 13 Hwakee Road	Chinese	60	—	—	—
Sing A Lee Engineering Works, 95-7 Hwakee Road	"	28	—	—	—
Kwan Tai Kee Boat Coolies, 721 Hwakee Road	"	90	—	—	—
Van Zung Yah Kee Engineering Works, 642 & 723 Hwakee Road	"	29	—	—	—
Ward Printing Co., 63 Kungping Road	"	36	—	—	—
Tai Shing Iron Works, 145 Kungping Road	"	15	—	—	—
Dah Loong Iron Works, 2 Dalny Road	Chinese	198	—	—	—
Sze Tuh Shing Box Maker, 7/8 Chusan Road	"	30	—	8	—
Tsing Yih Cotton Factory, 400 McGregor Road	"	12	5	5	—
Zung Wah Iron Works, 401 McGregor Road	"	47	—	—	—
Nanyang Bros. Tobacco Co., 299 Broadway	"	1,530	3,400	—	—
Kwan Chong Iron Works, 639 Broadway	"	40	—	20	—
Teang Yung Yuen Engineering Works, 1288 East Seward Road	"	22	—	—	—
Yah Tai Engineering Works, 24 Kwenming Road	"	30	—	—	—
Yung Shing Ziang Iron Works, 24 Kwenming Road	"	20	—	—	—
Mei Chong Sing Engineering Works, 195 Kwenming Road	"	20	—	—	—
Yah Dah Engineering Works, 250 Kwenming Road	"	35	—	—	—

Name and Address.	Nationality.	No. of Male Em- ployees over 12 years of age	No. of Female Em- ployees over 12 years of age	No. of Male Em- ployees under 12 years of age	No. of Female Em- ployees under 12 years of age
Tsung Wah Twine Maker, 251 Kwenming Road ..	Chinese	60	50	—	—
An Tai Engineering Works, 252 Kwenming Road ..	"	30	—	—	—
Yah Sing Engineering Works, 252 Kwenming Road ..	"	26	—	—	—
Central Printing Co., 39 Tongshan Road ..	"	80	6	—	—
Fuh Zung Engineering Works, 202 Tongshan Road ..	"	25	—	—	—
Zeu Chong Ziang Engineering Works, 1006 Tongshan Road ..	"	23	—	—	—
Dah Foong Dyeing Works, 1741 Tongshan Road ..	"	140	—	—	—
Sing Ming Engineering Works, 1741A Tongshan Road ..	"	40	—	—	—
Fah Shing Ziang Engineering Works, 1742 Tongshan Road ..	"	20	—	—	—
Van Wha Silk Factory, 1844 Tongshan Road ..	"	250	150	—	—
Yuen Chong Tai Iron Works, 1948 Tongshan Road ..	"	20	—	—	—
Sih Chong Match Factory, 2010 Tongshan Road ..	"	130	150	—	60
Way Chong Engineering Works, 24 E. Yuhang Road ..	"	80	—	—	—
Zeu Foong Weaving Factory, 149 E. Yuhang Road ..	"	—	15	—	—
Yuen Chong Tai Iron Works, 682 E. Yuhang Road ..	"	30	—	—	—
Sih Chong Iron Works, 684 E. Yuhang Road ..	"	30	—	—	—
Dee Yih Carpet Factory, 689 E. Yuhang Road ..	"	150	150	—	—
Mei Suh Cotton Factory, 729 E. Yuhang Road ..	"	20	20	—	—
Asiatic Engineering Co., 120 E. Yuhang Road ..	American	60	—	—	—
Ito Tobacco Factory, 88 Wayside Road ..	Japanese	60	70	—	—
Tsung Loong Iron Works, 484 Wayside Road ..	Chinese	38	—	—	—
Wah Tai Engineering Works, 485 Wayside Road ..	"	30	—	—	—
British & American Publishing Co., 82 Baikal Road ..	British	360	—	—	—
Ku Wah Hosiery, 1480 Baikal Road ..	Chinese	20	50	—	—
Yuen Nyih Tobacco Co., 1549 Baikal Road ..	"	20	10	—	—
Loh Sih Kai Ice Factory, 67 Ward Road ..	"	20	—	—	—
China Tobacco Co., 69 Ward Road ..	"	80	200	—	—
Sincere's Factory, 70 Ward Road ..	"	180	40	—	—
Trollope & Colls, Ltd., 70 Ward Road ..	British	24	—	—	—
American Tobacco Co., 50 Yulin Road ..	American	310	270	—	—
Sung Kee Engineering Works, 300 Yulin Road ..	Chinese	60	—	—	—

## YANGTSEPOO DISTRICT.

Ewo Cotton Spinning & Weaving Co., 46 Yangtzepoo Road ..	British	1,450	4,160	150	40
Heng Foong Cotton Mill, 1 Whashing Road ..	Chinese	500	1,850	200	400
Yangtzepoo Cotton Mill, 1 Wetmore Road ..	British	650	2,450	400	300
Shanghai Cotton Mfg. Co., No. 1, 68 Yangtzepoo Road ..	Japanese	632	1,990	18	10
Shanghai Cotton Mfg. Co., No. 2, 90 Yangtzepoo Road ..	"	528	1,437	22	13
Shanghai Cotton Mfg. Co., No. 3, 90 Yangtzepoo Road ..	"	1,050	3,200	—	—
Yuen Lung Cotton Mill, 71 Yangtzepoo Road ..	"	110	86	—	—
Eastern Engineering & Shipbuilding Works, 65/66 Yangtzepoo Road ..	"	300	—	—	—
Kong Shing Iron Foundry, 3272 Yangtzepoo Road ..	"	100	—	—	—
San Tsing Lumber Co., 900 Yangtzepoo Road ..	"	100	—	—	—
China Offset Printing Co., 4 Tsitsihar Road ..	"	150	—	—	—
Pao Shing Tinfoil Factory, 7 Thorburn Road ..	Chinese	100	—	—	—
Japanese Brass Foundry, 700 Thorburn Road ..	Japanese	100	—	—	—
Japanese Cigarette Factory, 700 Thorburn Road ..	"	100	150	—	—
Kong Tai Hosiery Factory, 76 Ward Road ..	"	100	100	—	—
San Sing Cotton Mill, 87 Yangtzepoo Road ..	Chinese	1,378	3,531	70	360
Hou Sung Cotton Mill, 22 Lay Road ..	"	540	1,800	100	100
Wei Tung Cotton Mill, 12 Lay Road ..	"	500	900	80	100
Toong Wo Cotton Mill, 87 Ward Road ..	Japanese	225	2,100	75	500
Pioneer Knitting Factory, 1050 Rangoon Road ..	Chinese	104	536	16	64
Wing On Cotton Mill, 10 Seoul Road ..	"	180	1,400	20	400
Kung Dah Cotton Mill, Pingliang Road ..	"	337	930	23	370
Dah Kong Cotton Mill, 2 Tengyueh Road ..	Japanese	753	1,496	20	150
Yui Foong Cotton Mill, 98 Yangtzepoo Road ..	"	400	120	60	520
S. Behr & Mathew, 77 Yangtzepoo Road ..	British	200	110	—	—
Chang Shing Loong Iron Foundry, 487 Pingliang Road ..	Chinese	30	—	—	—
Dong Shing No. 2 Mill, 90A Yangtzepoo Road ..	Japanese	630	1,008	—	—
Amos Bird & Co., 1 Tengyueh Road ..	American	140	400	—	—
Mai Wah Hosiery Mill, 17 Haichow Road ..	Chinese	240	15	—	—
Kung Gin Iron Foundry, 53 Linching Road ..	"	70	—	—	—
Chingyuan Mill, 299 Tanyang Road ..	"	60	24	—	—

## GORDON ROAD AND BUBBLING WELL DISTRICTS.

Chang Foong Flour Mill, 4 Ichang Road ..	Chinese	150	—	—	—
Foh Sing Flour Mill, 5 W. Soochow Road ..	"	480	—	—	—
Foo Foong Flour Mill, 25 Mokanshan Road ..	"	400	—	—	—
Hong Chang Weaving Factory, 53 Markham Road ..	"	250	950	50	50
Hong Chang Cotton Mill, 53 Markham Road ..	"	300	480	—	—
Hung Yue Cotton Mill, 55 Markham Road ..	"	600	1,700	100	200
Doong Shing Cotton Mill, 181 Gordon Road ..	Japanese	650	1,300	50	100
Japanese Cotton Mill, Nos. 3 & 4, 19 W. Soochow Road ..	"	1,400	1,350	100	150
Japanese Cotton Mill, Nos. 5, 7 & 8, 14 W. Soochow Road ..	"	1,020	2,762	80	180
Japanese Cotton Mill, No. 9, 60 Markham Road ..	"	1,000	1,950	—	50



Name and Address.	Nationality.	No. of Male Em- ployees over 12 years of age	No. of Female Em- ployees over 12 years of age	No. of Male Em- ployees under 12 years of age	No. of Female Em- ployees under 12 years of age
Pao Zung Cotton Mill, Nos. 1 & 2, Robison Road	Chinese	1,137	977	122	100
Poo Yih Cotton Mill, 37 W. Soochow Road	"	250	350	50	100
Sung Sing Cotton Mill, No. 1, Brenan Road	"	700	3,000	100	200
Sung Sing Cotton Mill, No. 2, 2 Ichang Road	"	650	1,540	20	30
Tung Yih Cotton Mill, 10 Mokhanshan Road	"	1,170	2,300	30	100
Toyoda Cotton Spinning & Weaving Co., 200 Jessfield Road, O. O. L.	Japanese	500	3,300	50	150
Shanghai Silk Spinning Co., 138 Jessfield Road, O. O. L.	Chinese	973	715	15	24
Sing Chang Silk Filature, 161 Jessfield Road, O. O. L.	"	—	1,400	—	100
Tsung Hwa Kung Yih Lace Mill, 2 400 Brenan Road	"	410	110	40	20
Tien Lung Silk Filature, 40 Ferry Road	"	70	—	—	—
Hemp Sack Factory, 64 Robison Road	Japanese	300	550	100	50
Kung Yih Cotton Mill, 150 Robison Road	British	400	1,350	100	150
Japan-China Spinning & Weaving Co., 98 Robison Road	Japanese	622	1,333	80	120
Japanese Cotton Mill, No. 12, 14 W. Soochow Road	"	384	300	—	—
Japanese Cotton Mill, No. 13 & 14, 62 Robison Road	"	568	1,494	—	—
Japanese Cotton Mill, No. 15, 146 Gordon Road	"	177	422	—	—
Sung Tuh Lace Factory, 999 Ferry Road	Chinese	245	120	—	—
Zung Tsong Silk Filature, 32 Connaught Road	"	—	360	—	30
Ting Kee Silk Filature, 32 Connaught Road	"	—	300	—	30
Price Candle Factory, 3 Robison Road	British	400	—	—	—
Arts & Crafts Factory, 85 Kiaochow Road	"	700	—	—	—
American Manufacturing Factory, 15 Robison Road	American	450	—	—	—
Shanghai Brewery, 40 Gordon Road	Swedish	50	—	—	—
Edison Electric Factory, Robison Road	American	800	—	—	—

## WEST HONGKEW DISTRICT.

Mei Ching Silk Filature, 51 N. Soochow Road	Italian	40	460	40	540
Say Hwa Silk Filature, 42 N. Chekiang Road	British	20	500	200	720
Yung Foong Silk Filature, 88 Kansuh Road	"	50	250	150	450
Yung Tai Silk Filature, 1 Tsepoo Road	Italian	80	900	200	1,180
Yung Yui Silk Filature, 5 Winchester Road	French	60	630	170	860
Yui Foong Silk Filature, 1 Alabaster Road	Italian	30	500	200	730
Yung Yui Silk Filature, 15 Dong Ka Loong	French	75	798	202	1,075
Yung Kong Silk Filature, 51 N. Soochow Road	British	9	228	92	329
Jen Foong Silk Filature, 1 Alabaster Road	"	7	200	50	300
Luen Ziang Silk Filature, 54 N. Soochow Road	"	8	210	60	290
Zu Shing Silk Filature, 54 N. Soochow Road	Chinese	10	250	90	320

## SINZA DISTRICT

Foong Tah Silk Filature, 9 N. Chengtu Road	Chinese	15	820	—	10
Tai Kong Silk Filature, 9A N. Chengtu Road	"	14	660	—	10
Zung Shing Silk Filature, 15 N. Chengtu Road	Italian	14	700	—	10
Foh Sing Flour Mill, 17 N. Chengtu Road	Chinese	200	—	—	—
Toong Dah Silk Filature, 5 Markham Road	"	15	712	—	20
Wei Fong Silk Filature, 5 Markham Road	"	18	580	—	10
Ewo Silk Filature, 5 N. Chengtu Road	British	30	1,000	—	30

## HONGKEW DISTRICT.

Zen Lung Silk Filature, 25 Miller Road	Chinese	100	1,700	—	200
Sino-Belgian Tobacco Co., 1176 Woosung Road	Belgian	20	30	—	—
Ching Lung Underwear Factory, 284 Dixwell Road	Chinese	30	220	—	—

## CENTRAL DISTRICT.

Liddell Bros. Packing & Sorting Godowns, 12 Foochow Road	British	150	500	—	—
McKenzie & Co., 7 Canton Road	"	300	500	—	—

## CHAPRI DISTRICT.

Yung Zung Silk Filature, 524 Tiendong Road	American	20	450	—	150
Yung Zung Silk Filature, 1870 Tiendong Road	"	20	450	—	150
Doong Foong Yoong Silk Filature, 408 Tiendong Road	Italian	20	300	—	150
Tien Chong Silk Filature, 312 Fung Sz Miao	Chinese	20	450	—	150
Zang Nyoen Silk Filature, 399 Veh Wo Road	American	20	600	—	200
Toong Yuh Silk Filature, 244 Veh Wo Road	"	20	650	—	250
Ching Chong Silk Filature, 276 Veh Wo Road	"	20	300	—	100
Veh Wo Silk Filature, 276 Veh Wo Road	"	20	600	—	250
Tsing Zung Silk Filature, 38 Hung Foong Road	Chinese	36	550	—	100
Lien Yuh Silk Filature, 38 Hung Foong Road	British	40	600	—	130
Hsu Chong Fok Silk Filature, 294 Hung Foong Road	Chinese	27	500	—	100
Yah Foong Silk Filature, 293 Hung Foong Road	"	22	380	—	150
Hung Chong Silk Filature, 293 Hung Foong Road	Chinese	20	367	—	143
Pah Sz No. 1 Silk Filature, 55 Kwang Fok Road	French	50	502	—	102
Pah Sz No. 2 Silk Filature, 68 Kwang Fok Road	"	12	250	—	90
Yah Ou Silk Filature	British	35	360	—	140

Name and Address.	Nationality.	No. of Male Em- ployees over 12 years of age	No. of Female Em- ployees over 12 years of age	No. of Male Em- ployees under 12 years of age	No. of Female Em- ployees under 12 years of age
Da Zung Silk Filature, 45 Kwang Fok Road ..	Chinese	24	340	—	120
Hung Tai Koong Silk Filature, 312 Chang An Road ..	"	26	350	—	130
Hsu Chong Zen Silk Filature, 189 Chang An Road ..	French	22	480	—	100
Nyoen Nyoen Silk Filature, 220 Chang An Road ..	Chinese	34	350	—	200
Hsun Chong Silk Filature, 220 Chang An Road ..	"	36	480	—	200
Zoen Foong Silk Filature, 19 Chang An Road ..	"	42	510	—	110
Chung Wo Yoong Silk Filature, 19 Chang An Road ..	"	45	530	—	110
Tien Lai Silk Filature, 33 Koong Woo Road ..	"	40	373	—	124
Da Lai Silk Filature, 33 Koong Woo Road ..	"	31	400	—	100
Kyung Foong Silk Filature, 4 Wo Zung Road ..	Italian	22	180	—	70
Tsung Da Silk Filature, 4 Wo Zung Road ..	Chinese	30	170	—	80
Yoong Nyoen Zung Silk Filature, 4 Wo Zung Road ..	"	28	200	—	100
Hsu Chong Yoong Silk Filature, 1 Nai Mei Yuen Road ..	"	23	520	—	130
Da Lung Silk Filature, 152 Wong Ka Zah, Jukong Road ..	"	30	300	—	100
Hsun Lee Silk Filature, 9 Manchuria Road ..	"	29	480	—	120
Yu Kong Zung Silk Filature, 9 Manchuria Road ..	"	25	500	—	120
Yuin Yui Silk Filature, 209 Wong Pang Jao, Paoshan Road ..	"	42	600	—	200
Tsung Shen Silk Filature, 92 Wong Pang Jao, Paoshan Road ..	"	34	320	—	80
Kiu Kyung Silk Filature, 16 Tientoong An Road ..	"	20	300	—	80
Tuh Shen Silk Filature, 10 Tientoong An Road ..	"	20	420	—	100
Yu Foong Silk Filature, 170 Koo Ka Wai ..	British	16	270	—	80
Hung Loong Silk Filature .. ..	Italian	17	420	—	90
POOTUNG DISTRICT.					
Nikka Cotton Mill .. ..	Japanese	784	2,442	—	—
B. A. T. (Old Factory) .. ..	Brit. & Amer.	874	1,805	180	84
B. A. T. (New Factory) .. ..	"	791	2,022	67	234

INDUSTRIAL EMPLOYMENT OF CHILDREN, HONGKONG

No. 22 of 1922.

I assent to this Ordinance,  
CLAUD SEVERN,  
*Officer Administering the Government.*  
September 29, 1922.

Short title.                   An Ordinance to regulate the employment of children in certain in-  
dustries.  
January 1, 1923.

Be it enacted by the Governor of Hongkong, with the advice and consent  
of the Legislative Council thereof, as follows:—

1.—This Ordinance may be cited as the Industrial Employment of  
Children Ordinance, 1922.

Interpretation.           2.—In this Ordinance:—

- 1 Edw. 7 c. 22, s.  
149.

10 and 11 Geo. 5,  
c. 65.
- (1) "child" means a person under the age of 15 years ;

(2) "dangerous trade" means any trade or occupation whatsoever  
which is declared by regulation made under this Ordinance to be  
a dangerous trade ;

(3) "factory" means any premises wherein or within the close or  
curtilage or precincts of which any manual labour is exercised  
by way of trade or for purposes of gain in or incidental to making  
any article, or part of any article, or altering, repairing, ornament-  
ing, finishing, or adapting for sale any article, provided that at  
least ten persons are employed in manual labour in the said  
premises and the close, curtilage and precincts thereof ;

(4) "industrial undertaking" includes:—  
(a) mines, quarries and other works for the extraction of minerals  
from the earth ;

- (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind ;
- (c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure ;
- (d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, and the carriage of coal and building material and debris ;

But does not include any agricultural operation.

- (5) "Inspector" means any person appointed by the Governor to be an Inspector of Juvenile Labour for the purposes of this Ordinance ;
- (6) "Protector" means any person appointed by the Governor to be the Protector of Juvenile Labour for the purposes of this Ordinance.

3.—(1). It shall be lawful for the Governor in Council to make regulations Regulations.  
for any of the following purposes :—

- (1) declaring what trades and occupations are to be deemed to be dangerous trades for the purposes of this Ordinance ;
- (2) prescribing the ages under which children shall not be employed in particular trades or occupations ;
- (3) prescribing the conditions under which children may be employed in industrial undertakings ;
- (4) imposing obligations upon persons who employ children in industrial undertakings, and on the servants of such persons ;
- (5) defining the duties and powers of the protector and the inspectors ;
- (6) exempting any industrial undertaking or factories from the operation of the Ordinance or any part thereof ;
- (7) generally, for the purpose of carrying into effect the provisions of this Ordinance.

(2). All regulations made under this Ordinance shall be laid on the table of the Legislative Council at the first meeting thereof held after the publication in the Gazette of the making of such regulations and if a resolution be passed at the first meeting of the Legislative Council held after such regulations have been laid on the table of the said Council resolving that any such regulation shall be rescinded or amended in any manner whatsoever, the said regulation shall without prejudice to anything done thereunder, be deemed to be rescinded or amended as the case may be, as from the date of publication in the Gazette of the passing of such resolution.

(3). The regulations in the Schedule shall be deemed to have been made under Ordinance, and shall be in force until rescinded or amended by regulations made under this Ordinance.

4.—(1). It shall be lawful for the Protector, and for any person authorized thereto in writing by the Protector, and for any inspector, to enter and search any place in which he may have reason to believe that any child is being employed in an industrial undertaking, and to seize anything which may appear to be evidence of any offence against this Ordinance. Search and enquiries.

(2). Every person who employs or has employed any child in an industrial undertaking, and every servant of any such employer, shall on demand give to the Protector, or to any inspector, all information in his possession with reference to such child, and all information in his possession with reference to the labour conditions and treatment of any children employed by such employer.

5.—In any prosecution under this Ordinance :—

- (a) if it appears to the magistrate that any person who is alleged in the charge to have been a child at the date of the alleged offence

Presumptions.



was a child at such date, it shall be presumed, until the contrary is proved, that such person was a child at such date ;

- (b) if it appears to the magistrate that any child, who is alleged in the charge to have been under any particular age at the date of the alleged offence, was under that particular age at the said date it shall be presumed, until the contrary is proved, that the said child was under the said age at the said date.

**Penalties.**

6.—Every person who contravenes or attempts to contravene or fails to comply with any of the provisions of this Ordinance or of any of the regulations made thereunder shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars and imprisonment for any term not exceeding six months.

**Consent.**

7.—No prosecution under this Ordinance shall be commenced without the consent of the Protector.

**Commencement.**

8.—This Ordinance shall come into force on the 1st day of January, 1923.  
Passed the Legislative Council of Hongkong, this 28th day of September, 1922.

A. DYER BALL,  
*Clerk of Councils.*

Assented to by His Excellency the Officer Administering the Government,  
the 29th day of September, 1922.

A. G. M. FLETCHER,  
*Colonial Secretary.*

#### SCHEDULE.—REGULATIONS.

1. The following are declared to be dangerous trades :—  
Boiler chipping.  
Fireworks, the manufacture of  
Glass making.
2. No person shall employ any child in any dangerous trade.
3. No person shall employ any child under the age of 10 years in any factory
4. No person shall employ any child under the age of 12 years in carrying coal or building material or *debris*.
5. (1) The owner and the manager of every factory in which children are employed shall cause to be kept, in English or Chinese, a running record of all the children at any time employed in such factory.  
(2) Such record shall contain the following particulars :—  
(a) name of factory ;  
(b) address of factory ;  
(c) name of employer or employers ;  
(d) name of manager of factory ;  
(e) name of child ;  
(f) sex of child ;  
(g) date of birth of child, or, if date cannot be ascertained, estimated age on some given date ;  
(h) address of child ;  
(i) name of parent or guardian ;  
(j) nature of employment ;  
(k) actual hours of work for every day on which the child is employed ;  
(3) Every such record shall be entered up promptly and accurately.
6. No child shall be allowed to work in any industrial undertaking for more than 9 hours in any period of 24 hours.
7. No child shall be allowed to work in any industrial undertaking for more than 5 hours continuously.
8. In any industrial undertaking the interval of relaxation between any spell of 5 hours continuous work and the next spell of work shall be not less than one hour, and the interval of relaxation after any spell of work of less than 5 hours duration shall be of reasonable duration having regard to all the circumstances.

9. Every child employed in any industrial undertaking shall be allowed one day's rest in every seven days.
10. No child shall be employed in any industrial undertaking between the hours of 7 p.m. and 7 a.m.
11. No child shall be allowed to carry any weight which is unreasonably heavy having regard to the child's age and physical development, and no child whatever shall be allowed to carry any load exceeding 40 catties in weight.

## CHINESE GOVERNMENT PROVISIONAL REGULATIONS

(See page 110.)

*An Order in re Child Labour, promulgated by the Ministry of Agriculture and Commerce on March 29, 1923.*

1. This Order applies to factories under the following heads :—
  - (a) Factories in which the number of labourers employed is over 100.
  - (b) Factories in which work of an extra-hazardous character, or which is detrimental to public health is carried on.

*Note.*—A further Order will be promulgated in due course with regard to factories in which this Order does not apply.

2. All factories established by foreigners in accordance with the preceding clause, and which are within the jurisdiction of the Chinese authorities, must also abide by this Order.
3. The proprietor of a factory shall not employ boys under the age of 10, nor girls under the age of 12.
4. Boys under 17 and girls under 18 are regarded as juveniles.
5. Juveniles shall be given tasks of an easy and light nature.
6. Juveniles shall not be required to work, exclusive of recesses, for more than 8 hours per day, and adults shall not be required to work, exclusive of intervals for rest, for more than 10 hours a day.
7. Proprietors of factories must not compel juveniles to work between the hours of 8 p.m. and 4 a.m.
8. Not less than two full days in every month shall be granted to adults for rest, and juveniles must be given not less than three full days rest every month.

*Note.*—In emergencies, or in case of accident, or in times of urgency, this rule may be temporarily suspended, but all such cases must be reported to the local authorities within 3 days of their occurrence.

9. All labourers must be given not less than one recess each day, and such recesses must be for not less than one hour.
10. In factories where both day and night work is carried on the shifts of workmen must be changed not less than once every ten days.
11. Wages shall be paid in the local currency, and payment in kind must not be made without the consent of the employee.
12. A definite pay-day must be fixed, and wages must be paid not less than once each month.
13. In special cases when the working hours must be prolonged, factory proprietors must make reasonable compensation for such overtime.
14. Owners of factories shall not make any deduction from the wages of their employees as security against breach of the rules of the factory, nor for any damage that may be caused by them.
15. If any savings scheme is proposed for the benefit of the employees the owner of the factory shall not retain any portion of his employee's wages without first obtaining their consent, and any proposals for a savings scheme must first be submitted to the local authorities for approval.
16. Any employee who resigns, or in case of the death of an employee, the owner of the factory of such employee must pay the full amount of wages due to the employee, if he resigns, or to his relatives in case of death ; also the full amount of the savings deposits remaining to the credit of such employee must be paid.
17. According to the conditions and circumstances of his factory, the proprietor must make provision for gratuities and rewards and he must first submit his proposals to the local authorities for approval.



18. Owners of factories shall provide, at their own expense, suitable educational facilities for their juvenile employees, also for any of their adult employees who have been thrown out of work.

*Note.*—Such free tuition shall be given for not less than 10 hours every week for juveniles, and for adults who have been thrown out of work free tuition must be given for not less than six hours every week.

19. In case of injury to, or of illness of employees, the owner of the factory must either limit the working hours of the employee or suspend them altogether, in his own discretion, but in the case of those who have been injured, or of those who become ill while employed in the factory, the proprietor must pay all of their medical expenses, and he must not deduct anything from their wages during the period of the illness of such employees.
20. Female employees must be given leave five weeks before and five weeks after accouchement, and they must also be given a suitable amount of money.
21. Juveniles and women must not be allowed in the engine rooms, or other places where machinery is in motion, for the purpose of scavenging, oiling, or for doing repair work, or to do any hazardous work.
22. Juveniles shall not be ordered to do any work which is connected with the handling of explosives or of noxious drugs.
23. Juveniles must not be employed in any place which is detrimental to health or where dust and/or powder is flying about.
24. In all factories precautionary measures must be taken against danger to the life and health of employees, and the local authorities have the right to send an officer to make periodical investigations into these matters.
25. Any factory whose premises and adjoining structures found by the local authorities to be dangerous to health, or to the public weal, the proprietor of such factory must make the necessary alterations, in accordance with the local authorities orders.
- Note.*—With reference to the above, when ordered by the local authorities, the whole or any part of the buildings may be condemned, and shall not be used.
26. The proprietor of a factory may engage any suitable person as manager of his factory, but the appointment must be reported to the local authorities.
27. Owners of factories shall be held responsible for the observance of the provisions of this order.
28. This order comes into force on the day of promulgation.

## REPORT OF DIPLOMATIC COMMISSION

(See page 138.)

June 24, 1925.

The Commission, sent to Shanghai by the decision of the Powers having common interests, taken on June 6, 1925, has the honour to report to you as follows on its mission.

We left Peking on Monday, June 8, and arrived at Shanghai on Wednesday the 10th at 7 a.m., after having received on our journey all the facilities we could desire from the Chinese authorities.

The same day, June 10, at midday, the Commission paid a visit to the Dean of the Consular Body. During its stay in Shanghai it kept in daily touch with him: when our instructions were extended, we informed the Dean of the Consular Body in writing and we did the same when leaving Shanghai, taking care to warn the Consular Body officially of our departure and to explain the reasons for it.

We in all matters found complete and friendly collaboration from M. de' Rossi and the Consular Body.

The Commission met for the first time in Shanghai on the afternoon of June 10 at the Italian Consulate. We then questioned Mr. Fessenden, Chairman of the Municipal Council and Mr. McEuen, Commissioner of Police. The information given by both will be found in Annexe No. 3. This shows that Mr. Fessenden was particularly questioned as to the reasons for which the Municipal Council did not cancel the special meeting of ratepayers called for June 2. We are further shown an extract from the police reports going back to May 15. (Annexe No. 4). Thus we were able from the very outset to obtain a sufficiently general view of events in their connexion with what had had occurred previously.

The Commission held its second meeting on the morning of June 11. We then examined a document which from the evidence of Mr. McEuen appeared to be very important. This document (Annexe 5) is entitled: "Extract from Memorandum for Guidance in case of Serious Trouble in the Settlement!" Partly made public during the trial in the Mixed Court, the instructions contained in this document seem to have caused great excitement among the Chinese; public opinion seized on them and construed them in a very inaccurate way, but in particular seized upon the phrase: "Shoot to kill."

At this second meeting the Commission mapped out its work. In obedience to its instructions to inquire as to the material nature of the events of May 30 to June 2, we set ourselves to learn these facts as completely as possible: the American, British and Italian members of the Commission visited all districts involved; they questioned the police inspectors who gave the orders to fire on May 30 and June 1 and took evidence regarding the events of June 2. The result of their inquiry will be found in Annexes—6A, 6B, 6C, 6D. Between the documents 6D and 6C some difference will be noticed, but the result of the information obtained by us is put together in Annexe No. 7, which may be considered as representing as nearly as possible the facts that we obtained.

The Japanese member of the Commission, for his part obtained information as to the incidents which, from May 15 onwards, upset the work in the mills of the Nagai Wata Kaisha Co. (The close connexion between these events and those of May 30 is well understood). Annexe No. 8 contains interesting details as to the immediate cause of the trouble of May 15 and the following days. Annexe No. 9, the facts for which were collected by the British member of the Commission, gives a concise view of the situation, going back into the more remote events, and describing what happened from February onwards, the disturbances, excitement and discontent sedulously worked up among the labouring population, the indifferent eyes of the Chinese police. The Commission particularly draws your Excellency's attention to this document. Then will be seen how the negligence of the Chinese authorities, from

the highest downwards, fostered the development of an agitation of which the regrettable events at the end of May were the inevitable outcome.

In order to complete its inquiry and to convince the Chinese of its impartiality, the Commission on Friday, June 12 and Saturday, June 13, took the depositions of six Chinese witnesses who were brought before us by the agency of Admiral Tsai Ling-kan and the President of the Chinese Chamber of Commerce of Shanghai. The latter himself brought the witnesses and introduced them at our meeting on June 13.

As your Excellency will see, the Chinese evidence, which forms Annexe 10, was not sufficiently precise to invalidate the statement of facts set out in Annexe No. 7. In addition to the above, the Commission, directly it arrived, got into touch with Admiral Tsai and the Vice-Minister of Foreign Affairs, who had also come to inquire into the events of May 30 and were already in Shanghai when we arrived. The President and the Secretary of our Commission had interviews with the Chinese investigators on June 10 and 11. The conversation was of a general character and it was carefully pointed out to the Chinese investigators that the two inquiries should be parallel but not joint and that they called for as complete an exchange of information as possible but not a fusion of it.

In point of fact, no documents were communicated between the two Commissions, but contact was kept and impressions exchanged, according to our instructions.

We pressed our investigations to the furthest possible limit, that is to say without infringing on matters of the judiciary (which was all the time at work on its own account); we collected information as fully as possible, but of course we had no power to compel witnesses to give evidence; and we believe that we are in a position to submit to your Excellency, in all sincerity, but with the reserve which the very nature of our inquiry demands, the following conclusions.

Precautions taken in the Settlement were naturally based on the information obtained by the police.

The police service of information is well organized according to the Chairman of the Municipal Council and the Commissioner of Police. Both of these gentlemen declare that they have enough men and money for this service (Annexe No. 3).

Further than this, in looking at the extract from the police report (Annexe No. 4) one may see that the police were kept well informed by their own people on all that was happening in Chinese territory as well as in the Settlement.

It is not the quantity or the precision of information obtained which has been lacking. But everybody knows that the importance of any information depends largely on the interpretation given to it by the person who brings it in.

The Chairman of the Municipal Council and Mr. McEuen are agreed in declaring that they had not foreseen any prospect of grave events on May 30, but nevertheless they did not judge the general situation in the same way: Mr. Fessenden generally foresaw trouble coming and Mr. McEuen did not.

While it appears to the Commission, that, by reason of the instructions of the police (Annexe No. 5) and of the behaviour of the crowd, Inspector Everson may have believed himself obliged to fire, a doubt exists in the minds of the Commission as to whether reinforcements of the police might not have been given him in advance or brought up in time to keep the crowd under control and prevent the necessity of firing.

The events of June 1 and 2 present themselves much more clearly: in both cases the forces on duty to keep order were deliberately attacked and they replied.

The Chairman of the Municipal Council declared to the Commission that he was not aware of the instructions to the police for time of disorder. These instructions (Annexe No. 5) date from 1919. It is for experts to decide whether they ought to be revised.

As for the strength of the police, Mr. McEuen is positive that there is nothing to be desired in this respect and that these forces are perfectly sufficient in normal times. Mr. Fessenden's opinion is slightly different.

If lack of co-operation between the police of the Settlement and the Chinese police continues, or if a state of disorder is prolonged in Shanghai, it will be advantageous to increase the police forces. It might, perhaps, be advisable to look towards an increase of the forces regularly kept in reserve



and the men of this force should have means of transporting themselves very rapidly to the danger spot in case of trouble.

Annexes 3 and 9 show what is the responsibility of the Chinese in the whole affair. It would seem that there is ground for the following demands:—

1. A responsible Chinese authority to keep firm control over the Chinese districts of Shanghai.

2. Careful surveillance over the Chinese police by this authority so that he may be able to assure himself that:—

- (a) employment is given to competent men and not sold;
- (b) that the police do not allow themselves to be influenced by anti-foreign agitation;
- (c) that the police observe their duties and the Chinese laws in particular as regards strikes, which is not done at present;
- (d) that the duties of the police are precisely laid down;
- (e) that the chief of the Chinese police co-operates frankly with the heads of the police forces of the foreign settlements.

We have the honour to remain, etc.,

J. TRIPIER  
G. M. VEREKER  
E. G. GREENE  
M. SHIHEMITSU  
J. ULLENES DE SCHOOTEN  
G. SCADUTO

# JUDICIAL INQUIRY'S REPORT ON MAY 30

(See page 150.)

## JUDGE FINLEY JOHNSON'S REPORT

### *Summary of Report of American Member of International Commission of Judges*

#### A. THE ORIGIN AND THE CHARACTER OF THE DISTURBANCES.

##### I. THE ORIGIN OF THE DISTURBANCES.

First :—The cause of many years standing.

- (a) The status of the Mixed Court ;
- (b) That the Chinese residents of the city of Shanghai have no part nor representation in the Government of the city.
- (c) In all cases, whether civil or criminal, where a foreigner is a party by or against a Chinaman, a foreigner is in fact the judge ;
- (d) Extraterritoriality ;
- (e) Less of sovereignty over territory ;
- (f) Projection of roads into Chinese territory without authority of the Chinese Government ;
- (g) Extension of the Government of Shanghai into Chinese territory over said roads ;
- (h) Modification of treaties ;
- (i) The mental attitude of both Chinese and foreigners due to the failure to have important questions of differences between them settled ;
- (j) Usurpation of legislative, judicial, administrative, and police powers in Chinese territory.

Second :—The Immediate and Proximate Causes.

- (a) The killing of Chinese laborers by Japanese in cotton mills ;
- (b) That said Japanese were not criminally prosecuted ;
- (c) The killing of Japanese by Chinese ;
- (d) The disturbances caused by strikes in various cotton mills occurring almost daily ;
- (e) The open and notorious agitation by members of Labour Unions ;
- (f) The agitation of the trouble by persons of bolshevistic tendencies ;
- (g) The proposal by the Municipal Council to adopt by-laws creating new criminal offences ;
- (h) The proposed by-laws by the Municipal Council, licensing stocks and produce exchanges ;
- (i) The proposed by-laws by the Municipal Council, punishing any person who shall print or publish or cause to be printed or published any newspaper, pamphlet, circular, handbill, leaflet, playcard or other paper containing public news, intelligence, or occurrences, or any remarks or observations thereof ;
- (j) The proposed by-laws seeking to restrict child labour.
- (k) The opposition to the proposed by-laws was made through the public press. The opposition was based upon the grounds that said proposed by-laws were (a) *ultra vires*, (b) unnecessary, (c) vexatious, (d) illegal in principle and wrong in force, and (e) for the further reason that the present laws were fully adequate ;
- (l) The labourers in the cotton mills to be paid more frequently and in a different kind of money ;
- (m) The failure to release students who had been arrested prior to the 30th day of May ;
- (n) The failure to pay indemnity to those who had been wounded and killed ;
- (o) The continuance of the construction of roads outside of the International Settlement ;

- (p) The failure to comply with the demand that certain Japanese employed in the cotton mills who had opened fire on the labourers be dismissed ;
- (q) The fact that various meetings held by Chinese students and others were broken up by the police ;
- (r) The failure to make an apology by the Japanese consular representatives to the Chinese Government for the treatment of the Chinese ;
- (s) The failure to make an apology by the Municipal Council for alleged incivilities by its officers ;
- (t) The failure to suppress gambling and abuses generally, including illicit traffic in opium ;
- (u) The many other supposed grievances between December 9, 1924, and May 30, 1925, which are found in the daily reports of the Police Department to the Municipal Council ;
- (v) From the daily report of the Police to the Municipal Council it will be seen that there were continuous troubles in some cotton mills between the laborers and the so-called students on one hand, and the management of the Japanese cotton mills on the other ;
- (w) The demand for the dismissal of foreign Sikh police ;
- (x) The evil and destructive influences to good and orderly government by paid foreign emissaries of Bolshevistic and Communistic governments, whose only purpose was not to assist and aid the Chinese people, but to excite and arouse a spirit of antagonism against all foreigners except themselves.
- (y) The failure on the part of the foreigners in China to realize that the Chinese people have made greater advancement during the past 10 years in civic, in the fundamental principles of government and in the better understanding of individual rights under the law, than they have made in any 100 years during their entire history.

The mere enumeration of foregoing causes is no expression of opinion as to their merits or justice. They are mentioned to show the frame of mind of the Chinese on May 30, 1925.

## II. THE CHARACTER OF THE DISTURBANCES

We have the almost unanimous testimony of the policemen who were present, that in their judgment, up to within a few moments of the firing they did not believe that the so-called rioters intended to do harm to person or property.

### *What Actually Occurred before the Crowd was Fired upon by the Police*

It will be remembered that nearly an hour and a half before the firing took place, four or five students have been arrested and taken to the Louza Station and locked up, and a large number of other students followed them, about 18 in number, and were also locked up at their request. The record contains no intimation that they had created any disturbance. It will also be remembered that the testimony of the police shows that later other students were arrested, who were followed by more, about 20 in number, without any indication that they had violated the law, and were locked up. They were all charged together with the crime of riot in the Mixed Court. Later more students were arrested and taken to the station and were followed by 70 to 100 others, some of whom were not students ; that those who followed went into the room, called the "charge room," and there became noisy ; that they were later forcibly and perhaps with some violence ejected and driven out upon Nanking Road.

### *The Real Cause of the Crowd on Nanking Road on May 30, and The Shooting*

The witnesses all agree that in the beginning the crowd had no intention of doing harm to person or property, nor to cause any disturbances whatever.

The evidence as to the real cause of the shooting varies from the assertion that no justifiable cause or reason existed for it, to the statement by Inspector Everson that Louza Police Station would have been destroyed had the firing upon the crowd not taken place.

It was asserted that those who saw no reason for the shooting were those of a more humane disposition and disliked the spilling of human blood and to some extent were prejudiced ; while those who thought the firing upon the crowd was necessary to protect life and property were not prejudiced and had acted in good faith.



*Might the Necessity for Shooting have been Avoided ?*

After reading and a re-reading of the evidence several times, including the exhibits, I am fully persuaded that, with a much larger force of policemen on duty at the scene of the disturbances before 3.15 p.m. the necessity for the firing might have been avoided. I am equally persuaded that due to the absence of a larger number of policemen at 3.30 p.m. it was impossible.

*What Occurred to Change the Temper of the Crowd ?*

I am fully persuaded that the change in the temper of the crowd must have been due, to the following reasons.

First:—To the "long" and "immediate" alleged grievances between the Chinese people and the foreigners.

Second:—To the mingling of the 70 to 100 persons, who had been forcibly and violently ejected from the charge room by foreigners, with the crowd upon the street.

Third:—To the evident absence to the crowd of a sufficient number of policemen.

**B. REASONS THAT EXISTED FOR ANTICIPATING DISORDER**

First:—A telephone message recorded in the telephone book of Central Station at page, 1, sent by C. D. I. Givens at 11.35 a.m.

Second:—Another telephone message to all stations sent by C. D. I. Givens at 12.15 p.m.

Third:—At 1.55 p.m. Mr. Everson was informed by Sergeant Willgoss that he had just received a message from a Chinese Sergeant, that students were holding a meeting at Lloyd and Nanking Roads corner.

Fourth:—At 2.40 p.m. a telephone message was sent from Louza Station to Central Station, which read: "Chinese students are parading in the Louza District, carrying flags bearing anti-Japanese wording, and making anti-Japanese speeches. About 50 have been arrested."

Fifth:—At 3.34 p.m., another message was sent from Louza Station to Central Station, which reads: "We are firing on the mob in Nanking Road."

Sixth:—At 3.43 p.m., a message was received from Louza Station which reads: "We are firing on Chinese students on Nanking Road."

Seventh:—At 3.55 p.m., a message from Captain Martin which was ordered to be circulated. It reads: "All men are confined to barracks."

Eighth:—At 4 p.m., a message was received from Commissioner of Police, which reads: "Mobilization. Circulate it."

Ninth:—The daily report of the Acting Commissioner of Police, the Commissioner of Police, as well as that of the C. D. I., from December 9, 1924, up to and including that of May 29, 1925, shows the disturbed conditions in and about Shanghai for that period: and a summary of labour, student, and Bolshevik activities and diary of events leading to the shooting on the Nanking Road near the Louza Station, shows the same condition.

**C. PRECAUTIONS THAT WERE OR MIGHT HAVE BEEN TAKEN TO PREVENT DISORDER**

First:—That the total number of police officers and policemen "available for duty" had remained substantially the same.

Second:—The record shows that about the same number of officers and men available for duty continued from December 9, 1924, each day, up to May 30, 1925.

Third:—There is nothing in the evidence which shows that additional policemen to those available for duty were called upon, nor that all who were available for duty were called out at any time on May 30.

Fourth:—So far as the record shows, no "special precautions" were taken to prevent disturbances until 2.15 p.m. on May 30, and nearly two hours after the notice given by the Commissioner of Police that "special precautions" should be taken. The record shows that even as late as 3.25 p.m. there were only about six foreigners actually on duty at Louza Station and a few Sikhs and Chinamen, the exact number not shown, outside of the firing squad.

**D. MEASURES TAKEN TO SUPPRESS THE DISORDER OF MAY 30**

No steps whatever, except to ring the fire bell, were taken to increase the number of police who were available for duty at that time.

**E. THE CIRCUMSTANCES IN WHICH CERTAIN PERSONS LOST THEIR LIVES  
AND OTHER PERSONS SUFFERED INJURIES**

In my opinion, the circumstances in which certain persons lost their lives and other persons suffered injuries on May 30, 1925, near Louza Station, in the city of Shanghai, are sufficiently described in the discussion under the heading of "The Character of the Disturbances" above. Reference is therefore hereby made to that discussion.

Conclusion:—

First:—That the nature and character of the disturbances are those which I have enumerated above under the heads: (a) the remote causes and (b) the immediate causes of said disturbances.

Second:—That taking into account: (a) the accumulated information by the Police Department which had been daily furnished to the Municipal Council from December 9, 1924, to May 30, 1925, and (b) the vivid history of former disturbances in the city, I am fully persuaded that there existed some reason for anticipating disorder and disturbances on the part of those whose duty it was to maintain order.

Third:—That little or nothing was done until it was too late to prevent what happened.

Fourth:—That what we have said during the course of our relation of the facts above, based upon the evidence, we believe fully and correctly states the measures which were taken to suppress the disturbances of May 30.

Fifth:—We believe that the facts which are stated above under the head of "Character of the Disturbances" fully and correctly give in detail the circumstances in which 29 persons were killed and wounded on the day of May 30.

Sixth:—That I noted the willingness of all parties who had to do with the disturbances of May 30 to subject themselves to the investigation conducted by the Commission.

Seventh:—That the Municipal Council is handicapped in the administration of municipal affairs by reason of the undefined authority which it exercises.

Eighth:—That a certain class of foreign policemen did not exercise, in handling the crowds upon the street and in arresting individuals, a sufficient amount of humaneness.

Ninth:—That those in authority should as speedily as possible bring to a close the negotiations relating to the status and character of the Mixed Court.

Tenth:—That the question of participation on the part of the Chinese people in the actual government of the city of Shanghai, so far as treaty relations will permit, should be taken up, mutually discussed and settled.

Eleventh:—That the question of extraterritoriality which compels the Chinese people to submit to foreign laws should speedily and without delay be mutually discussed and settled.

Twelfth:—That the alleged grievance on the part of the Chinese people relating to the loss of sovereignty and territory in the region of the city of Shanghai is also a question which those in authority should not overlook.

Thirteenth:—That the grievance of the Chinese people concerning unjust treaties negotiated with selfish and perhaps dishonest officials, is another question which should be carefully considered, mutually discussed, and justly settled by all of the friendly nations of the Chinese people.

Fourteenth:—That the foreigners in China have failed to take into account the principles of liberty and independence which they themselves have spread abroad throughout China.

Fifteenth:—That the Chinese people have begun to take on a new civilization.

Sixteenth:—That Inspector Everson fully believed at first that the crowd had not come together for the purpose of doing violence; that by reason of the numerous duties he was then performing, he did not fully realize that the temper of the crowd had so rapidly changed. At that moment he acted in accordance with the "mobilization instructions," fully realizing the personal consequences of a failure so to do.

Seventeenth:—That the Commissioner of Police, Mr. Kenneth John McEuen, notwithstanding his full and complete information concerning the continuous condition existing in and about the city of Shanghai from

December 9, 1924, to the morning of May 30, 1925, as well as the fact that students and others were planning to distribute anti-Japanese circulars and deliver anti-Japanese speeches, left the city at 12.15 p.m. on May 30, without giving notice to his deputy of the fact; and notwithstanding his full and complete notice of all of the serious conditions, he remained out of the city for a period of about three hours, and even upon his return he went directly to the race course without calling up any of his subordinates for the purpose of informing himself concerning the existing condition. In my judgment, there can be no justification, considering the conditions of which he had been fully informed, for leaving his post of duty and remaining outside of the city for a period of nearly three hours. I can see no basis for his absence from duty on that day without giving notice to his deputy which can be harmonized with his responsibility. His presence and his personal direction of his police force at Louza Station as late as 3.15 p.m. on May 30, 1925, might have saved the lives of some innocent persons.

### SUMMARY OF THE REPORT OF MR. K. SUGA

*Japanese Member of the International Commission of Judges*

#### A. THE ORIGIN AND CHARACTER OF THE DISTURBANCES

Several of the witnesses referred to the strong anti-foreign sentiments entertained by certain sections of the Chinese nation. Evidence shows that these sentiments have been fostered by the notion that China is not in possession of the same rights as other Powers and is being submitted to undue sufferings in consequence of unequal treaties.

The strikes of Chinese workers which broke out in February and May in some of the Japanese cotton mills in or about the International Settlement of Shanghai were partly due to these anti-foreign sentiments. During the disturbances connected with the strikes in May some of the rioters were arrested by the Municipal Police and a Chinese worker received injuries which resulted in his death.

Towards the end of May students and labourers held a number of meetings in order to express their sympathy with the strikers, to protest against the death of the worker, and with the object of securing the release of those who had been arrested. They carried on violent propaganda in various streets within the Settlement against the Japanese and other foreign nations, and the attempts on the part of police to suppress it had the effect of turning a large crowd from more or less normal condition to a state of frenzy in a short space of time.

#### B. THE REASONS, IF ANY, THAT EXISTED FOR ANTICIPATING DISORDER

The situation described above clearly indicated the possibility of a certain amount of disorder. However, the inflammatory activities of students of this kind were no uncommon events in those days, and, in view of the absence of any serious disturbances in February and no marked change in the situation in May, the great disorder of May 30 may be considered an occurrence of such a sudden nature that it would scarcely have been possible to foresee it.

#### C. THE PRECAUTIONS THAT WERE OR MIGHT HAVE BEEN ADOPTED TO PREVENT THE DISTURBANCES

It may be said that considering that it was one which scarcely could have been foreseen, it is not reasonable to expect measures which would have prevented it on the part of the authorities.

#### D. THE MEASURES TAKEN TO SUPPRESS IT

Inspector Everson saw that the police force would soon be overpowered and the Station, with its store of arms and ammunition, would fall into the hands of the mob. The situation did not permit a moment's delay and there being no other measure to take, he ordered his men to fire.

#### E. THE CIRCUMSTANCES IN WHICH CERTAIN PERSONS LOST THEIR LIVES AND OTHERS SUFFERED INJURIES

As the result of the shooting, 12 men lost their lives and 17, as far as it is known, were injured.



## CONCLUSION :

In view of the situation which existed about the time of the incident of May 30 and of the suddenness with which the disturbance took place, I am of the opinion that Mr. McEuen, Captain Martin and the other Municipal authorities are not responsible for failing to anticipate it. For the same reason Inspector Everson is not subject to censure for declining the Commissioner's offer to send reinforcements about 20 minutes previous to the situation which called for firing.

I am also of the opinion that the police authorities took due precautions which the situation indicated by the information in their possession required and therefore none of them can be accused of culpable negligence in the discharge of their duties.

Inspector Everson's order to fire was justifiable, inasmuch as it may be considered to have been necessary in order to protect Louza Station and thereby avert serious danger to life and property.

It may be added that Mr. Fessenden, as Chairman of the Municipal Council had no executive power on May 30 and therefore the question of his responsibility in this incident, as Chairman, does not arise.

## SUMMARY OF REPORT OF SIR H. G. GOLLAN

*British Member of International Commission of Judges*

## A. THE ORIGIN AND CHARACTER OF THE DISTURBANCES

I am of opinion that it is essential to look beyond the occurrence on that day, and to differentiate between the exciting cause which produced the explosion, and the causes which created the state of mind amongst the Chinese which made the explosion possible.

Mr. Fessenden, the Chairman of the Municipal Council, (and others ?) were astonished at the intensity of the feeling aroused in the Chinese mind ; though they said they were previously aware that amongst the Chinese there existed certain conditions and causes which tended to produce dissatisfaction and anti-foreign feeling in their minds, such as.

1. The unsettled political state of the country, and suffering caused by the civil war among the people ;
2. The lack of representation of Chinese on the Municipal Council ;
3. The question of the rendition of the Mixed Court ;
4. The matter of the control of roads made by the Municipal Council beyond the limits of the Settlements ;
5. The question of the abolition of extraterritorial rights and the abrogation of unequal Treaties.

Dr. Cline, in the course of his evidence, said that on May 30, he was given a pamphlet by a student on the Nanking Road containing protests against certain bye-laws which it was proposed to lay before a meeting of the Ratepayers to be held on June 2, 1925, relating to :—

- (a) The Regulation of the Press ;
- (b) The imposition of wharfage dues, and
- (c) Child labour in the factories.

Besides these causes, which were topics of general discussion both in private and in the press, it appears from the evidence of Mr. Fessenden, Mr. Teesdale, Mr. McEuen and Inspector Givens that Bolshevik partizans had been busily engaged in stirring up ill-feeling in the minds of the working classes. Students and members of the teaching staff of an institution known as the Shanghai University had been especially active in this respect.

Then, in December 1924, strikes occurred in certain Japanese Mills in which great bitterness of feeling was displayed and very considerable damage to property was done ; and several Japanese employees in the mills were injured, of whom one subsequently died from his injuries.

The trouble at the Nagai Wata Mill, which is situated within Settlement limits, culminated on May 15, when police and others fired on the strikers and wounded some of them ; of whom a man of the name Koo Tsung-hung died on May 17.

During the morning of May 30, nothing abnormal appears to have occurred in the Louza District which was at that time, and is at present, in

charge of Inspector Everson, an experienced officer who has been in the Shanghai Municipal Police Force since July 1906.

#### FIRST SIGNS OF TROUBLE

On May 30, the force under the command of Inspector Everson consisted of 318 men, of whom 25 were foreigners, 65 Sikhs and 227 Chinese. Of this number about one-third would be actually on duty at any given time during the day ; whilst the remaining two-thirds, except under express orders, were at liberty to dispose of their time as they thought fit.

The first intimation that there was any trouble in his district reached Inspector Everson about 1.55 p.m., when a Chinese Sergeant, No. 254, reported to him that a meeting was being held at the corner of Lloyd and Nanking Roads, and had refused to disperse when directed to do so.

Finding that the speech was anti-Japanese in tone, and that the statements on the banners were also anti-Japanese and anti-foreign in character, Inspector Everson and his party arrested four of the students and took them to the Louza Police Station whither they were followed by 18 other students.

Finding out from his own observation, and from the reports brought to him, that the speechmaking and meetings in and about the Nanking Road continued, Inspector Everson caused the Fire alarm bell to be rung ; which had the effect of bringing to his assistance some five foreign, 16 Sikh, and 12 or 13 Chinese constables.

By Inspector Everson's orders, various members of the police force were doing patrol duty on the Nanking Road at this time but though the crowds were large, there was no idea present, at this time, in the mind of Inspector Everson that the public peace was in any way in danger of disturbance.

The Commissioner of Police, having reached the Race Course, rang up Inspector Everson, and got into communication with him about 3.15 p.m. Inspector Everson told the Commissioner that he was having trouble with students, that he had locked up a large number of them, that there were 50 of them in the charge room, and that he wanted instructions as to how to deal with them. The Commissioner at first told the Inspector to caution them and send them away, but, on learning that some of them had assaulted the police, the Commissioner gave instructions that the latter should be detained and the others sent away. The Commissioner further questioned the Inspector about the state of his district and inquired of the latter whether he had sufficient men ; to which the Inspector answered in the affirmative. I do not see anything in the evidence to lead me to the conclusion that, on the facts within his knowledge, Inspector Everson's answer to the Commissioner of Police was not perfectly reasonable.

This was about 3.30 p.m., and Inspector Everson, having observed the condition of the Nanking Road at this time and having decided that the situation was serious, sent Sergeant Papp to tell Captain Martin at the Recreation Ground that his presence was urgently required.

The evidence given by the various police witnesses is that the crowd moved slowly back to a spot near the main entrance to the Town Hall, which is about 300 feet to the east of the entrance to the Louza Police Station, when it met with a large accession in numbers from persons going west along the Nanking Road, and also from persons who were pouring down the side roads.

The Police who were engaged in inducing this crowd to move back said that they had little difficulty in doing this at first, and that it did not appear to be angry in temper. Till they got to the Town Hall the crowd numbered about 400 persons, but there its size was rapidly increased till it numbered about 2,000. Then the crowd stopped, and the police were unable to induce them to retire any further.

The crowd made a rush at the police, and Sub-Inspector Shellswell, realizing the danger of the situation, ordered the Police to draw their batons and fall back.

There was another crowd to the west of the entrance to the Louza Station, and one in the Yunnan Road, which enters the Nanking Road opposite the entrance to the Police Station.

When the main crowd was within 20 or 30 yards of this entrance, Inspector Everson stated that he gave the order to present and the present and the armed party was in full view of the advancing crowd. He also said that before giving the order to fire he ran five yards towards the crowd, waving his

pistol and shouting in English "Stop, or I will shoot," and in Chinese, "Stop, or I will kill."

Finding that the crowd did not stop, the Inspector ran back to the armed police and gave the order to fire which, owing to the din made by the crowd, appears not to have been heard.

The Inspector then seized the rifle of the Sikh standing next to him, and fired at the crowd; and then the rest of the police, who consisted of 11 Sikhs and 11 Chinese, fired a somewhat ragged volley. The Inspector had intended that his order to fire should have been followed by a volley, but he stated that the result was more like independent firing. As it did not stop the crowd he gave the order to load, present, and fire again. The second volley stopped the crowd and effectually dispersed it.

At first the crowds in the Nanking and neighbouring roads appear to have been composed of students, and of the ordinary sightseer class, but many of the persons who were ejected from the charge room were of a much rougher class, according to Inspector Everson. When this crowd was largely increased just before the police began to fall back the evidence is that the character of the reinforced crowd changed much for the worse, and that there was a dangerous element in its composition.

Finally, it is only fair to state that the demeanour of Inspector Everson during, and immediately after, this most unfortunate occurrence, is said to have been quite calm and collected, and there was nothing in the nature of excitement or panic noticed by any of the witnesses in his conduct.

#### CONCLUSION

After full and careful consideration of all the evidence adduced by the witnesses, of their demeanour, and of the inherent probabilities of the respective stories told by them, I am clearly of opinion that the evidence given by the police witnesses, and supported by the large body of independent testimony, is substantially correct, and that Inspector Everson was justified in coming to the conclusion that, if the crowd had not been fired upon, the lives of the police under his command would have been sacrificed, and the crowd would have gained possession of the Louza Police Station: with results that might have been most serious in view of the quantities of arms and ammunition stored there.

And it is also to be remembered that, a mob had in December 1905 seized and destroyed the Louza Police Station, in the face of strenuous opposition offered by a body of unarmed police.

A matter that struck me was the rapid change that, according to the evidence, took place in the state of mind of the crowd; within a period of about 15 minutes, and without the commission of any acts by the police tending to irritate the crowd. At one time, the group of students who had been ejected from the chargeroom, and the others who had joined them, were being induced to move back by a small body of police. The leading idea in the mind of this crowd would then seem to have been to obtain the release of the students who had been detained.

Then this smaller retreating crowd was stopped by a much larger crowd with elements of an unruly character in it, a student coming from the direction of the Louza Police Station waved to the amalgamated crowd to return in the direction of the Station, the movement to the east was arrested, certain persons developed a high state of excitement which communicated itself to the rest of the crowd, the crowd turned on the police, and finally was worked up to attack the policemen who guarded the approach to the Louza Police Station. The evidence of Major Hilton-Johnson throws light on this aspect of Chinese mob psychology. He particularly referred to "first, the inflammability of the Chinese temperament and the rapidity with which, in the mass, they are capable of passing from a state of quiescence to a state of frenzy which soon gets beyond their control; second the length to which a mob raised to that pitch of fury, will proceed and the excesses it will commit unless the mob spirit subsides or is quelled."

#### B. THE REASONS, IF ANY, THAT EXISTED FOR ANTICIPATING DISORDER

It is clear that a strong feeling of hostility was operating, on general grounds, in the minds of certain members of the Chinese community in Shanghai against foreigners for some time previous to May 30, 1925. There had also been strikes at a considerable number of cotton mills in which serious



action had had to be taken by the police ; and some strikers had been injured, while one of them had subsequently died from his injuries.

In the memorandum which reached the Commissioner of Police at 12.15 p.m. on May 30, nothing is said as to the place where. It is only fair to remember that action taken by students previously to May 30 had never led to serious consequences and that, as happened in May, 1919, when students attempted action similar to that taken by them on May 30, no disturbance had occurred.

In the circumstances above set forth I do not think that on the May 30 there were any reasons which ought to have been present to the minds of the responsible authorities in the Settlement and have led them to anticipate disorder on that day.

**C. THE PRECAUTIONS THAT WERE, OR MIGHT HAVE BEEN TAKEN TO PREVENT THE DISTURBANCES**

There was no information in the possession of the Municipal Authorities on May 30, 1925, which pointed directly, to the possibility of disorder in any particular place or places taking place in the Settlement on that day.

The information in his possession did not point to any particular time or place on, or at which, disorder might arise, and there was nothing to show that occurrences such as these which took place on May 30, were more likely to arise on that day, than on any previous or succeeding day.

**D. THE MEASURES TAKEN TO SUPPRESS THE DISORDER**

The actual measures taken to suppress the disorder are set out in preceding parts of this Report.

**E. THE CIRCUMSTANCES IN WHICH CERTAIN PERSONS LOST THEIR LIVES, AND OTHER PERSONS SUFFERED INJURIES**

Those matters have been dealt with in discussion the other heads of the Investigation and I have nothing to add to what has already been said.

## SHANGHAI MUNICIPAL POLICE MOBILIZATION INSTRUCTIONS

*Published for General Information.*

**"From the Police point of view a rioter may be defined as a person who takes part with others in a tumultuous disturbance of the peace during which actual violence is done by those concerned.**

**In regard to rioters the Police will not hesitate to take summary and drastic measures, utilising as far as possible all ordinary Police methods available, such as baton charges and the use of the rifle butt.**

**The use of firearms is justifiable and may be resorted to when it appears that loss of life or serious damage to person or property at the hands of rioters is imminent and that such loss or damage can be prevented by no other means.**

**It is to be clearly understood that the object of fire action by the Police against a riotous mob is to prevent loss of life or serious damage to person or property ; and consequently, that no more than the minimum amount of fire required to achieve this object is permissible or can be justified.**

**In this connection it will be borne in mind that in some cases the necessity for opening collective fire may be avoided altogether by the judicious use of individual shots fired at selected targets in the mob.**

**If circumstances allow, due warning of the intention to open fire should be given. This may be done by word of mouth ; by the ostentatious display and handling of weapons ; the fixing of bayonets ; or by the exhibition of special banners which are kept at all Police Stations for the purpose. Every effort should also be made to explain to the people that if fire is opened it will be effective.**

**On no account will blank ammunition be used ; nor will shots be fired either over the heads of a mob or at the ground in front of it.**

**On the contrary, it must be clearly understood by all concerned that whenever the Police are called upon to use firearms against rioters in the protection of life or property, their fire will be effective."**

**E. I. M. BARRETT**

*Commissioner of Police.*

**June 3, 1926.**

## INTERNATIONAL MIXED COURT, SHANGHAI

(See page 212.)

### CIVIL PROCEEDINGS.

As from the first day of April, 1926, all interlocutory applications to the Court (that is to say, applications which do not decide the rights of the parties, but are made for the purpose of keeping things in *status quo* until the rights can be decided, including applications for security or immeditate security, or for the purpose of obtaining some direction of the Court as to the conduct of the action) whether made in Chambers or otherwise *ex parte*, must be supported by evidence in writing in the form of a solemn declaration or declarations of a witness or witnesses. Any such declaration shall be intituled in the cause or matter in which it is declared : shall be drawn up (if in English) in the first person, and in all cases shall state the description and true place of abode of the deponent : shall be divided into paragraphs, numbered consecutively, each of which, so far as possible, must be confined to a distinct portion of the subject : shall deal only with facts which the witness making the declaration can prove of his own knowledge (but statements as to the belief of a witness will be admitted, provided the grounds of such belief are stated, and not otherwise), and shall be signed and declared by the witness in the presence of the Registrar of the Court or such other officer or officers as he shall for that purpose appoint, who shall attest the same. In the case of a Chinese witness, or a witness other than Chinese capable of understanding Chinese but not English, the declaration shall be in the Chinese language and the witness shall sign the Chinese text, three or more English translations thereof being furnished and filed in the usual manner. In other cases the declaration shall be in the English language and the witness shall sign the English text, two or more copies in English and a Chinese translation being also furnished and filed in the usual manner. In the event of a witness being unable to understand Chinese or English, the English text shall be first read over and explained to him in his own or in a language which he is capable of understanding by a qualified interpreter in the presence of the officer attesting the declaration who shall append a certificate to that effect. Statements so made shall have the same force and effect as evidence given before the Court and shall render the witness or witnesses making such statements liable to the same penalties that are imposed by law in respect of false evidence, and the deponent shall be so informed by the officer attesting the declaration.

No extra fee will be imposed for the taking of such declarations.

In all such interlocutory applications the applicant will be required to establish fully by means of such declarations the grounds upon which he relies, and oral evidence will not be taken, except such evidence as the Court shall see fit to hear after hearing the applicant and/or his counsel and reading such declaration or declarations.

Any person affected by an order of the Court made *ex parte*, shall be entitled to receive from the Registrar a copy of the application upon which it was made and a copy of any declaration filed in support.

This joint ruling of the Magistrates and Assessors of the International Mixed Court is published for general information.



## REPORT OF SHANGHAI MUNICIPAL COMMISSION ON SALE OF POISONS

(See page 266.)

Shanghai, October 29, 1923.

SIR,—

1.—We have the honour to submit the following report.

2.—The terms of reference were as follows :—

- (a) To investigate and report as to what (if any) action can be taken to regulate or restrict the sale of Poisons within the Settlement (Chairman of Shanghai Municipal Council to Senior Consul, November 9, 1922).
- (b) In this connexion to consider (I) the Provisional Regulations for the Registration of Chinese and Foreign Drug Stores and (II) the Provisional Regulations governing the issue of Special Licenses, both issued by the local Bureau of Drug Inspection and Standardization of the Ministry of the Interior. (Chairman of Shanghai Municipal Council to Senior Consul, April 10, 1923).

3.—The Commission commenced its labours on April 6, 1923. Eleven prolonged meetings were held covering over 30 hours. Moreover a sub-committee of experts entrusted with the drafting of the Schedules has devoted 17½ hours in five meetings and considerable time for the study of this important work of an intricate and highly technical character.

Following upon your election as Chairman of the Shanghai Municipal Council the Commission to its regret received your resignation. The Commission keeps a pleasant remembrance of your collaboration and feels confident that you are in entire agreement with the conclusions and recommendations embodied in this Report and in the Regulations, although they do not bear your signature.

4.—As regards the term of reference under (b) the Commission is of the opinion that the Chinese Provisional Regulations referred to therein cannot be recommended in their present form for approval and application within the Settlement for reasons of jurisdiction and practicability. In various parts they are contrary to the Chinese Government Morphia and Cocaine Regulations. In sympathy with the principle which prompted the Chinese Government to attempt the regulation of the traffic in drugs and with a view to enforcing control on the sale thereof, the Commission in the annexed drafted regulations has provided for the control of poisons and noxious drugs alike. In doing so it has followed the method which the Council had adopted in their Municipal Notification of June 16, 1921, number 2872. The Commission was moreover guided by Bye-Law XXXIV, which makes subject to a license any person who sells or keeps a shop, store, stall or place for the sale of any noxious drugs and poisons, proprietary or patent medicines.

5.—In dealing with the whole of these problems it became clear to the Commission that the limits of the reference must be exceeded, and the Commission has deemed it desirable if the work entrusted to it were to bear result to extend enquiries and activities beyond the questions directly raised by the references themselves. Apart from including noxious drugs and medicines into its proposed regulations the Commission has considered the feasibility of placing the whole of the agglomeration of Shanghai under one scheme of control and to that end it has entertained informal relations with the Commissioner in charge of the Bureau of Drug Inspection and Standardization, who has expressed his willingness and desire to co-operate. The collaboration of the authorities of the Concession Francaise has been previously assured.

6.—Ad. Section I of the Regulations :—

The Commission resolved that with a view to obtaining certainty as to the enforcement of the regulations it should be recommended that the initial

regulations as well as any future amendments be submitted to the Consular Body before they are advertised and brought into force.

7.—Ad. Section 4 (a) and Section 9 of the Regulations :—

The term "the representative recognized in charge of his national interests" is interpreted by the Commission as "a consular officer acting in charge of alien interests and as such recognized by the Chinese Government."

8.—Ad. Section 4 (b) and 4 (c) of the Regulations :—

In the opinion of the Commission the decision whether a Chinese applicant may be granted a license or not, must rest with a Board, appointed by the Council. The following constitution is suggested: two qualified medical practitioners, one foreign and one Chinese, two chemists, one foreign and one Chinese, one veterinary surgeon, one dentist, one representative of the Council and one of the Consular Body. The Board shall in special cases have the right to secure at their discretion the co-operation of one or more experts. The Commission wishes to recommend that the Conseil Municipal Francaise be invited also to appoint a representative with a view to promoting further close co-operation between the two foreign communities. In case the Chinese authorities resolve to enforce the regulations within their jurisdiction the Council may deem meet to consider the inclusion of a representative of the Bureau of Drug Inspection and Standardization. With special regard to Section 4 (c) it is further recommended that only those scheduled poisons which it is believed are commonly stocked by Chinese medicine shops be specified as they appear on the general schedule. Not only will a special license be required but the shop keeper will have to adhere to the regulations governing these poisons, i.e., entry must be made in the Poisons Register when a sale is made. Other scheduled poisons not specified in the special schedule must on no account be sold by the medicine shop keeper.

The Commission does not recommend the sale of opium in any form by this class of licensee.

Extreme care will be required in making up the translation of the special schedule into Chinese, in order that the names of the drugs allowed to be sold correspond both to those already in use by the native medicine man and to those of the new standard code.

9.—Ad. Section 5 (a) of the Regulations :—

The Commission desires to emphasize the fact that compilation of a list of qualified professional persons, i.e., medical practitioners, dentists and veterinary surgeons, is essential before these regulations can become operative.

It is further recommended that the Council should formulate legal enactments for the compulsory registration of both foreign and Chinese medical practitioners.

Pending the coming into force of such legal enactments the Commission has pleasure in advising the Council that the Consular Body has promised similar co-operation in the drawing up of the list of professional persons as has been given for several years in connexion with the admission of local physicians to practise in the Shanghai General and the Municipal Hospitals. In this connexion it is suggested that the medical members of the special board recommended in Paragraph 8 should undertake the consideration of the credentials of both foreign and Chinese professional persons desiring registration in Shanghai.

10.—Ad. Section 5 (c) of the Regulations :—

The Commission wishes to enable the dispensing of prescriptions issued by qualified medical persons abroad in the interests of travellers.

11.—Ad. Section 5 (f) of the Regulations :—

The Commission is of the opinion that the shipping interests of this port require adequate provisions for ships' doctors and other non-resident professional men who come under this clause.

12.—The Commission wishes to direct the Council's special attention to the Chinese Government Morphia and Cocaine Regulations. Under the existing Regulations foreign chemists and druggists must guarantee that the articles which they are allowed to import will be used exclusively in the compounding of prescriptions or sold in small quantities only on the requisition of a duly qualified foreign or Chinese medical practitioner. The official interpretation is that the articles imported must be used for the purposes indicated exclusively by the person who imported such articles. Chinese pharmacies situated in a foreign concession and compounding Western

medicines are allowed to import the articles in question under similar restrictive conditions. In the interests of the sick and the suffering it is essential that one licensed retail dealer be permitted to sell to another licensed retail dealer the articles mentioned in the Regulations.

Under the proposed Municipal Regulations all the purchases and disposals of these articles must be properly registered. The Municipal servants have the right to verify the records at any time. The records might be inspected also by the Customs, should the proper authorities desire to make provisions to that effect. The prohibition of the sale by one licensee to another constitutes an unreasonable and useless hardship. It entails unnecessary difficulties upon the dispensers, who must refuse the dispensing of *bona fide* prescriptions every time their stock of one or another of the constituent articles has become exhausted. Moreover it constitutes a danger for the patients concerned and the latter circumstance alone makes the revision of the Regulations an urgent necessity.

Furthermore the Commission has been informed of recent regulations subjecting to importation under bond, and consequently to sale in small quantities only on the requisition of a duly qualified practitioner, all articles containing morphia, etc., in infinitesimal quantities, *e.g.*, cough lozenges and similar patent medicines.

Such regulations are deemed an unnecessary hardship to the public. Finally the Commission understands from the Regulations though sales to hospitals are permitted under special instructions, that no sales can be made to universities, laboratories, schools of instruction and other similar institutions. The Commission wishes to point out the serious obstacle which the Regulations thereby place in the way of scientific instruction and research work.

13. For all these reasons the Commission urges upon the Council that the necessity of the revision of the Morphia and Cocaine Regulations be forthwith exposed to the Chinese Government through the proper Consular and Diplomatic channels with a view to obtaining :—

- (a) for all licensed chemists and druggists the right to sell to each other under the provision of obligatory record,
- (b) also the right to sell to universities, laboratories, schools of instruction, etc., for the purposes of investigation and research on a requisition signed by the principal official of the institution concerned,
- (c) that no restriction be placed upon the importation of compounded medicines containing, in the case of :
  - (i) OPIUM and preparations of opium less than one-fifth of one per cent. of anhydrous morphine.
  - (ii) MORPHINE, DIAMORPHINE (HEROIN), and their respective salts and any preparation, admixture or other substances less than one-fifth of one per cent. of anhydrous morphine or one-tenth of one per cent. of diamorphine.
  - (iii) COCAINE, ECGONINE and their respective salts, derivatives and substitutes and any preparation, admixture, extract or other substance less than one-tenth of one per cent. of cocaine, ecgonine or their derivatives or substitutes.
- (d) that no restriction be placed upon the importation of the following :—

#### PREPARATIONS OF OPIUM.

Liniment of Opium B. P. C.  
 Ammoniated Liniment of Opium.  
 Mercury and Opium, Pills or Tablets.  
 Ipecac and Squill and Opium, Pills or Tablets.  
 Digitalis and Opium, Pills or Tablets.  
 Lead and Opium, Pills or Tablets or Suppositories.  
 Aromatic Chalk and Opium, Pills or Tablets.  
 Mercury with Chalk and Opium, Pills or Tablets.  
 Compound Kino Powder.  
 Gall and Opium Ointment.  
 Cholera Cures or Drops.

14.—Ad. Sections 9 and 10 of the Regulations :—

The Commission finding that it is necessary to make provisions for the wholesale trade in noxious drugs and poisons is of opinion that the Council



must use their powers by virtue of Bye-Law XXXIV to control the wholesale and auctioneering trades.

15.—Ad. General Schedule Part II :—

The Commission is of opinion that it is necessary for the Council at their discretion and when they deem fit to declare any specific patent and or proprietary medicines to come under Part II of the Schedule, and that these medicines shall then be dealt with as the poisons now enumerated therein.

16.—The Commission wishes to recommend that Bye-Law XXXIV be amended at such early moment as may seem possible with a view (a) to prohibiting illegal possession of the articles under Part I of the Schedule and (b) to substituting the words "dangerous drugs" for "noxious drugs" as the former term whilst being more generally used by the trade also gives expression to the risk of habit abuse.

17.—The Commission wishes to direct the attention of the Council to the enclosed list of cases of poisoning admitted into the General Hospital so that the Council if they deem fit may place under the regulations governing Part I certain articles which are now enumerated in Part II of the Schedule.

18.—The Commission wishes to point out the desirability as a precautionary measure and in the public interest of a notification, independent of the present regulations, to make obligatory the labelling of all containers of the following articles with the word "Poisonous" and its Chinese equivalent as, well as the name and the address of the seller and the name of the article : *Strong Mineral Acids* : Hydrochloric Acid, Nitric Acid, Sulphuric Acid, Hydrofluoric Acid and *Strong Solutions of Ammonia*.

19.—The Commission wishes to place on special record the excellent services rendered by Dr. C. Noel Davis and Mr. F. G. C. Walker and to express to them the members' great appreciation and sincere gratitude.

We have the honour to be, Sir, your obedient servants,

COMMISSION ON SALE OF POISONS.

WILLEM DANIELS, *Chairman*

A. H. F. EDWARDES

C. GORDON OAKES

P. O'BRIEN TWIGG

G. H. WRIGHT

T. K. M. SIAO

E. L. MARSH

W. L. NEW

The Municipal Council.

PROPOSED NOXIOUS DRUGS AND POISONS REGULATIONS.

The following regulations for the control of the sale of noxious drugs, poisons, proprietary or patent medicines within the limits of the Foreign Settlement, authorized by the Council under the powers conferred by Bye-Law XXXIV annexed to the Land Regulations, are published for public information :—

1.—No person shall sell or keep a place for the sale of noxious drugs, poisons or proprietary and patent medicines forming a mixture of noxious drugs or poisons as enumerated in the attached "Noxious Drugs and Poisons Schedule," and hereinafter referred to as "the scheduled articles" without a license first obtained from the Council. The Council may from time to time by resolution declare that any article in such resolution named ought to be deemed a scheduled article and such resolution to become binding shall be advertised in the Municipal Gazette.

2.—The Municipal Council may issue suspend or withdraw licenses. Licenses shall be non-transferable.

(a) The license shall be exhibited in a conspicuous place inside the premises where the licensee has established his business. In case of removal to other premises immediate notice shall be given to the Municipal Council.

(b) No gratuities shall be paid to any Municipal employee.

(c) Licenses for the sale of articles enumerated in the Chinese Government Morphia and Cocaine Regulations or in other similar regulations for

the time being in force shall not cover such articles unless they are imported in accordance with the regulations mentioned and the sale of such articles if found to have been irregularly imported shall constitute a breach of the regulations.

- (d) On a breach of any of its conditions the license shall be subject to cancellation or suspension by the Council and the whole or any part of the money deposited as security, if any, be liable to forfeiture at option of the Council and the licensee liable to prosecution.
- (e) The licensee shall be solely and entirely responsible for any breach or disregard of any condition contained in this license by himself, his servants, agents or representatives.

3.—(a) The containers of all articles covered by these schedules, except as a part of a compounded medicine in accordance with the prescription of a duly qualified person, must be distinctly labelled with the word "Poison" in English and Chinese, and also with the name and address of the seller and the name of the article.

For the purpose of the schedule to these Regulations, percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of any substance means a preparation in which one gram of the substance, if a solid, or one cubic centimeter of the substance, if a liquid, is contained in every one hundred cubic centimeters of the preparation, and so in proportion for any greater or less percentage.

#### RETAIL DEALERS

- 4.—(a) A person, being a foreigner, to obtain a license shall send to the Municipal Council an application accompanied by a certificate signed by his national Consul or the representative recognized in charge of his national interests, stating that the applicant under his national laws is in his native country duly qualified to sell or keep a place for the sale of all the scheduled articles. In case the foreign applicant has no consular or other recognized representative it shall be left to the Council to decide whether applicant's qualifications justify the issue of a license.
- (b) A person, being a Chinese, to obtain a license shall send to the Municipal Council an application accompanied by diplomas, testimonials or other written documents, showing his qualifications to sell or keep a place for the sale of all the scheduled articles and the Council shall at its discretion grant or refuse the application.
- (c) A medicine shopkeeper, being a Chinese, to obtain a license to sell or to keep a place for the sale of special scheduled articles only, which must be nominated in such license, shall apply to and furnish the Municipal Council with all such information and/or documents as the Council in each case may require.

5.—No articles included in Part I of the Schedule shall be supplied by the licensee except :—

- (a) To a qualified medical practitioner, dentist or veterinary surgeon who has registered with the Council or to the prescription of such person. The Council shall at the end of each quarter provide licensees with a list of all such registered persons and any alterations occurring meanwhile shall be published regularly.
- (b) For export from the port of Shanghai in accordance with Chinese Maritime Customs Regulations for the time being in force.
- (c) To the prescription of a qualified medical practitioner, dentist or veterinary surgeon non-resident in Shanghai and in accordance with such prescription but in such cases the licensee shall enter in his register the name and address of the prescriber and of the person for whom the prescription is dispensed.
- (d) To Hospitals only on a requisition signed by a qualified medical practitioner.
- (e) To any person other than the above producing sufficient proof of identity as a qualified medical practitioner, dentist or veterinary surgeon practising elsewhere provided that he first signs the Poisons Register.

6.—No licensee shall administer by injection any article included in Part I of the Schedule.

7.—All prescriptions containing any article mentioned in Part I of the Schedule shall be subject to the following rules :—

- (a) The name and address of the patient and the signature of the prescriber must be on either the front or back of the prescription.
- (g) The prescription shall not be repeated more than five times without the consent, in writing, of a qualified medical practitioner, dentist or veterinary surgeon as the case may be.
- (c) The date of each repetition to be recorded on the back of the prescription and in the Prescription Book.
- (d) No such prescription to be dispensed if it be known to the licensee that it is presented on behalf of any other person than the original owner.

8.—The licensee shall keep on the premises Noxious Drugs and Poisons Registers in the form prescribed by the Municipal Council, these registers to give accurate particulars of all importations and sales of all articles in Part I of the Schedule and records of all sales of all articles in Part II of the Schedule.

Such registers and the prescription books shall be open to inspection by the Commissioner of Public Health or his accredited representatives at all times and all possible information shall be given to them concerning the transactions recorded therein.

#### WHOLESALE DEALERS.

9.—A person being a wholesale dealer, or the authorized representative of a firm of wholesale dealers.

- (a) To obtain a license for the sale of all the Scheduled Articles shall send to the Council an application accompanied by a certificate, signed by his national Consul, or the representative recognized in charge of his or of the firm's national interests, as the case may be, stating that he, or the firm he represents, is recognized as a fit person or firm, as the case may be, to deal in articles enumerated in Part I of the Schedule, provided that sales of such articles are in accordance with the Chinese Government Morphia and Cocaine Regulations for the time being in force. If such articles are used in the compounding of medicines for direct sale to the public such transactions shall be deemed to be of the nature of retail transactions and shall come under the regulations governing retail dealers. Records of importations and sales of these articles shall be kept as required under Chinese Maritime Customs Regulations for the time being in force and such records shall be open to inspection of the Commissioner of Public Health, or his accredited representatives, at all times, and all possible information shall be given them concerning the transactions recorded therein.

A person being a wholesale dealer, or the authorized representative of a firm of wholesale dealers.

- (b) To obtain a license for the sale of articles enumerated in Parts II and III of the Schedule, shall send to the Council an application accompanied by a signed declaration that he, or the firm he represents, as the case may be, deals in any or all of these scheduled articles in the ordinary course of his business.

A license will be issued on condition that there is no sale by retail to the public.

No record of sales of articles enumerated in Part II of the Schedule shall be required.

For the purposes of these regulations the word "Firm" shall include companies.

#### AUCTIONEERS.

10.—An auctioneer shall not sell by auction any of the articles enumerated in Part I of the Schedule. An auctioneer shall not sell by auction any of the articles enumerated in Parts II and III of the Schedule, except under a permit issued by the Council. Such permit will only be issued in respect of any one particular auction and the application for permit shall state in detail the nature and quantity of the scheduled articles it is desired to sell.



## NOXIOUS DRUGS AND POISONS SCHEDULE.

## PART I.

Noxious drugs which may only be supplied under the conditions of the Regulations and records of which must appear in the Noxious Drugs Register.

(i) 1.—Opium and preparations of opium which contain not less than one-fifth of one per cent. of anhydrous morphine.

2.—MORPHINE, DIAMORPHINE (HEROIN), and their respective salts and any admixture, preparation or other substance containing not less than one-fifth of one per cent. of anhydrous morphine or one-tenth of one per cent. of diamorphine.

3.—COCAINE, ECGONINE and their respective salts, derivatives and substitutes and any preparation, admixture, extract or other substance containing not less than one-tenth of one per cent. of cocaine, ecgonine or their derivatives or substitutes.

(ii) EXEMPTED PREPARATIONS OF OPIUM. (These exempted preparations, with the exception of approved cholera cures, come under Part II of this Schedule).

Liniment of Opium, B.P.C.

Ammoniated Liniment of Opium.

Mercury and Opium, Pills or Tablets.

Ipecac and Squill and Opium, Pills or Tablets.

Digitalis and Opium, Pills or Tablets.

Lead and Opium, Pills or Tablets or Suppositories.

Aromatic Chalk and Opium, Pills or Tablets.

Mercury with Chalk and Opium, Pills or Tablets.

Compound Kino Powder.

Gall and Opium Ointment.

\*Cholera Cures or Drops.

\*The formulæ for these must be submitted to and approved by the Municipal Council before exemption can be granted.

## PART II.

POISONS not to be sold unless the purchaser be known to, or introduced by some person known to the seller. Records of all such sales to appear in the Poisons Register.

1.—The preparations of Opium enumerated as exemptions from Part I of this Schedule, with the exception of approved cholera cures.

2.—Alkaloids—all poisonous vegetable alkaloids not specifically mentioned in this Schedule and their salts, and all poisonous derivatives of vegetable alkaloids.

3.—Arsenic and its medicinal preparations.

4.—Atropine, and its salts and their preparations.

5.—Belladonna, and all preparations and admixture containing not less than one-tenth of one per cent. of Belladonna alkaloids.

6.—Cantharides, and its poisonous derivatives.

7.—Cannabis Indica (indian hemp) and its preparations with the exception of collodions.

8.—Chloral Hydrate and its preparations.

9.—Chloroform, pure.

10.—Corrosive sublimate.

11.—Cyanide of potassium and all poisonous cyanides and their preparations.

12.—Diethyl-barbituric acid and other derivatives of barbituric acid, whether described as Veronal, Propinal, Modinal or by any other trade name, mark or designation.

13.—Ergot of Rye and preparations of Ergota.

14.—Nux Vomica and all preparations or admixtures containing not less than one-fifth of one per cent. of strychnine.

15.—Prussic Acid and all preparations and admixtures containing not less than one-tenth of one per cent. of prussic acid.

16.—Strychnine, its salts and admixture and any preparation containing not less than one-fifth of one per cent. of strychnine.

## PART III.

POISONS of which no record of sale is required.

1.—Digitalis and its preparations.

- 2.—Mercuric Iodide.
- 3.—Red Precipitate and all oxides of Mercury.
- 4.—Oxalic Acid Salts of Lemon and Salts of Sorrel.
- 5.—White Precipitate.
- 6.—Pure Carbolic Acid and Solutions containing not less than three per cent. of pure Carbolic Acid.
- 7.—Chloroform Preparations containing not less than twenty per cent. of pure Chloroform.

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### SPECIAL SCHEDULE

#### FOR CHINESE MEDICINE SHOPS.

Poisons listed in the Schedule which may be sold by a Chinese medicine shop keeper under special license only. Records of sales of those poisons included in Part II of the Schedule to appear in the Poisons Register.

PART I of the General Schedule. Nil.

PART II of the General Schedule :—

Arsenic and its medicinal preparations.

Belladonna, and all preparations and admixtures containing not less than one-tenth of one per cent. of Belladonna alkaloids.

Cantharides (Chinese Blister Fly) and its poisonous derivatives.

Cannabis Indica (Indian Hemp) and its preparations.

Nux Vomica and all preparations or admixtures containing not less than one-fifth of one per cent. of strychnine.

PART III of General Schedule :—

Digitalis and its preparations.

Mercuric Iodide.

All oxides of Mercury.





## PART III.



## IMPERIAL EDICTS OF ABDICATION

(Promulgated February 12th, 1912)

*Translated and published by the Commission on Extraterritoriality, Peking.*

### I

We (the Emperor) have respectfully received the following Imperial Edict from Her Imperial Majesty the Empress Dowager Lung-Yu :

As a consequence of the uprising of the Republican Army, to which the different provinces immediately responded, the Empire seethed like a boiling cauldron and the people were plunged into utter misery. Yuan Shih-kai was, therefore, especially commanded some time ago to dispatch commissioners to confer with the representatives of the Republican Army on the general situation and to discuss matters pertaining to the convening of a National Assembly for the decision of the form of government to be adopted. Two months have elapsed and no really suitable mode of settlement has been discovered. Separated as the South and the North are by great distances, the unwillingness of either side to yield to the other can result only in the continued interruption of trade and the prolongation of hostilities, for, so long as the form of government is undecided, the Nation can have no peace. It is now evident that the hearts of the majority of the people are in favour of a republican form of government: the provinces of the South were the first to espouse the cause, and the generals of the North have since pledged their support. From the preference of the people's hearts, the Will of Heaven can be discerned. How could We then bear to oppose the will of the millions for the glory of one Family! Therefore, observing the tendencies of the age on the one hand and studying the opinions of the people on the other, We and His Majesty the Emperor hereby vest the sovereignty in the People and decide in favour of a republican form of constitutional government. Thus we would gratify on the one hand the desires of the whole who tired of anarchy are desirous of peace, and on the other nation hand would follow in the footsteps of the Ancient Sages, who regarded the Throne as the sacred trust of the Nation.

Now Yuan Shih-kai was elected by the Tzu Cheng-yuan to be the Premier. During this period of transference of government from the old to the new, there should be some means of uniting the South and the North. Let Yuan Shih-kai organize with full powers a provisional republican government and confer with the Republican Army as to the methods of union, thus assuring peace to the people and tranquillity



to the Empire, and forming the one Great Republic of China by the union as heretofore of the five peoples, namely, Manchus, Chinese, Mongols, Mohammedans, and Tibetans together with their territory in its integrity. We and His Majesty, the Emperor, thus enabled to live in retirement, free from responsibilities and cares and passing the time in ease and comfort, shall enjoy without interruption the courteous treatment of the Nation and see with Our own eyes the consummation of an illustrious government. Is not this highly advisable?

Bearing the Imperial Seal and Signed by :

YUAN SHIH-KAI, Premier.

HOO WEI-TEH, acting Minister of Foreign Affairs ;

CHAO PING-CHUN, Minister of the Interior ;

TAN HSUEH-HENG, Acting Minister of the Navy ;

HSI YEN, acting Minister of Agriculture ;

LIANG SHIH-YI, Acting Minister of Communications ;

TA SHOU, Acting Minister of the Dependencies.

25th day of the 12th moon of the 3rd year of Hsuan T'ung.

## II.

We have respectfully received the following Imperial Edict from Her Imperial Majesty the Empress Dowager Lung-Yu :

On account of the perilous situation of the State and the intense sufferings of the people, We some time ago commanded the Cabinet to negotiate with the Republican Army the terms for the courteous treatment of the Imperial House with a view to a peaceful settlement. According to the memorial now submitted to Us by the Cabinet embodying the articles of courteous treatment proposed by the Republican Army, they undertake to hold themselves responsible for the perpetual offering of sacrifices before the Imperial Ancestral Temples and the Imperial Mausolea and the completion as planned of the Mausoleum of His Late Majesty the Emperor Kuang Hsu. His Majesty the Emperor is understood to resign only his political power, while the Imperial Title is not abolished. There have also been concluded eight articles for the courteous treatment of the Imperial House, four articles for the favourable treatment of the Imperial Kinsmen, and seven articles for the treatment of Manchus, Mongols, Mohammedans, and Tibetans. We find the terms on perusal to be fairly comprehensive. We hereby proclaim to the Imperial Kinsmen and the Manchus, Mongols, Mohammedans, and Tibetans that they should endeavour in the future to fuse and remove all racial differences and prejudices and maintain law and order with united efforts. It is our sincere hope that peace will once more be seen in the country and all the people will enjoy happiness under a republican government.

Bearing the Imperial Seal and Signed by :

YUAN SHIH-KAI, Premier ;  
HOO WEI-TEH, Acting Minister of Foreign Affairs ;  
CHAO PING-CHUN, Minister of the Interior ;  
TAN HSUEH-HENG, Acting Minister of the Navy ;  
HSI YEN, Acting Minister of Agriculture ;  
LIANG SHIH-YI, Acting Minister of Communications ;  
TA SHOU, Acting Minister of the Dependencies.

25th day of the 12th moon of the 3rd year of Hsuan T'ung.

### III.

We have respectfully received the following Edict from Her Imperial Majesty the Empress Dowager Lung-Yu :

In ancient time the ruler of a country emphasized the important duty of protecting the lives of his people, and, as their shepherd, could not have the heart to cause them injury. Now the newly established form of government has for its sole object the appeasement of the present disorder with a view to the restoration of peace. If, however, renewed warfare were to be indefinitely maintained by disregarding the opinion of the majority of the people, the general condition of the country might be irretrievably ruined, and there might follow mutual slaughter among the people, resulting in the horrible effects of a racial war. As a consequence, the spirits of Our Imperial Ancestors might be greatly disturbed and millions of people might be terrorized. The evil consequences cannot be described. Between the two evils, We have adopted the lesser one. Such is the motive of the Throne in modeling its policy in accordance with the progress of time, the change of circumstances, and the earnest desires of Our people. Our ministers and subjects both in and out of the Metropolis should, in conformity with Our idea, consider most carefully the public weal and should not cause the country and the people to suffer from the evil consequences of a stubborn pride and of prejudiced opinions.

The Ministry of the Interior, the General Commandant of the Gendarmerie, Chiang Kuei-ti, and Feng Kuo-chang, are ordered to take strict precaution, and to make explanations to the people so clearly and precisely as to enable every and all of them to understand the wish of the Throne to abide by the ordination of Heaven, to meet the public opinion of the people, and to be just and unselfish.

The institution of the different offices by the State has been for the welfare of the people, and the Cabinet, the various Ministries in the Capital, Vice-royalties, Governorships, Commissionerships, and Taotaiships, have therefore been established for the safe protection of the people, and not for the benefit of one man or of one family. Metropolitan and Provincial officials of all grades should ponder over the present difficulties and carefully perform their duties. We hereby hold it the duty of the senior officials earnestly to advise and warn their

subordinates not to shirk their responsibilities, in order to conform with Our original sincere intention to love and to take care of Our people.

Bearing the Imperial Seal and Signed by :

YUAN SHIH-KAI, Premier ;

HOO WEI-TEH, Acting Minister of Foreign Affairs ;

CHAO PING-CHUN, Minister of the Interior ;

TAN HSUEH-HENG, Acting Minister of the Navy ;

HSI YEN, Acting Minister of Agriculture ;

LIANG SHIH-YI, Acting Minister of Communications ;

TA SHOU, Acting Minister of the Dependencies.

25th day of the 12th moon of the 3rd year of Hsuan Tung.



# TERMS OF FAVOURABLE TREATMENT OF THE IMPERIAL FAMILY AND MANCHUS, MONGOLS, MOHAMMEDANS AND TIBETANS

(March 13th, 1912).

*Translated and published by the Commission on Extraterritoriality, Peking.*

## A.—CONCERNING THE EMPEROR.

The Ta Ching Emperor having proclaimed a republican form of government, the Republic of China will accord the following treatment to the Emperor after his resignation and retirement.

*Article 1.*—After abdication the Emperor may retain his title and shall receive from the Republic of China the respect due to a foreign sovereign.

*Article 2.*—After abdication the Throne shall receive from the Republic of China an annuity of Tls. 4,000,000 until the establishment of a new currency, when the sum shall be \$4,000,000.

*Article 3.*—After abdication the Emperor shall for the present be allowed to reside in the Imperial Palace, but shall later remove to I-ho-yuan, or the Summer Palace, retaining his body-guards at the same strength as hitherto.

*Article 4.*—After abdication the Emperor shall continue to perform the religious ritual at the Imperial Ancestral Temples and Mausolea, which shall be protected by guards provided by the Republic of China.

*Article 5.*—The Mausoleum of the late Emperor not being completed, the work shall be carried out according to the original plans, and the services in connexion with the removal of the remains of the late Emperor to the new Mausoleum shall be carried out as originally arranged, the expense being borne by the Republic of China.

*Article 6.*—All the retinue of the Imperial Household shall be employed as hitherto, but no more eunuchs shall be appointed.

*Article 7.*—After abdication all the private property of the Emperor shall be respected and protected by the Republic of China.

*Article 8.*—The Imperial Guards will be retained without change in members or emolument, but they will be placed under the control of the Department of War of the Republic of China.

## B.—CONCERNING THE IMPERIAL CLANSMEN.

*Article 1.*—Princes, Dukes, and other hereditary nobility shall retain their titles as hitherto.

*Article 2.*—Imperial Clansmen shall enjoy public and private rights in the Republic of China on an equality with all other citizens.

*Article 3.*—The private property of the Imperial Clansmen shall be duly protected.

*Article 4.*—The Imperial Clansmen shall be exempt from military service.

C.—CONCERNING MANCHUS, MONGOLS, MOHAMMEDANS AND TIBETANS.

The Manchus, Mongols, Mohammedans, and Tibetans having accepted the Republic, the following terms are accorded to them :—

*Article 1.*—They shall enjoy full equality with Chinese.

*Article 2.*—They shall enjoy the full protection of their private property.

*Article 3.*—Princes, Dukes, and other hereditary nobility shall retain their titles as hitherto.

*Article 4.*—Impoverished Princes and Dukes shall be provided with means of livelihood.

*Article 5.*—Provision for the livelihood of the Eight Banners shall with all dispatch be made and until such provision has been made the pay of the Eight Banners shall be continued as hitherto.

*Article 6.*—Restrictions regarding trade and residence that have hitherto been binding on them are abolished and they shall now be allowed to reside and settle in any department or district.

*Article 7.*—Manchus, Mongols, Mohammedans, and Tibetans shall enjoy complete religious freedom.

## REGULATIONS CONCERNING THE TREATMENT APPLICABLE TO MONGOLS

(August 19th, 1912).

*Translated and published by the Commission on Extraterritoriality, Peking.*

1.—Hereafter, Mongolia should not be treated as a dependency, but should be placed on equal footing with other provinces. In its relations with the administration of Mongolia, the Central Government should no longer employ such terms as dependency, territory, colonization, etc.

2.—The controlling and administrative powers of the princes of Mongolia should be duly respected as usual.

3.—The hereditary titles of the Khans, the princes and the administrators of Inner and Outer Mongolia should be continued as usual, and the special privileges which they enjoy under their own banners should go on as usual.

4.—The five banners of Tonglou Uringhai, and the seven banners of Altai-Uringhai which used to be under the charge of a deputy Lieutenant-General and a Comptroller-General should continue to be under their control. Those who succeed to these offices will enjoy the same as hereditary titles.

5.—The original titles of the Hutukhtus (Saints) and the Lamas in all parts of Mongolia should continue as usual.

6.—All frontier questions and all diplomatic relations of Mongolia with foreign countries should be conducted by the Central Government. However, when the Central Government recognizes the important bearing of any case on local authorities, the same will be immediately referred to them for discussion before any step is taken.

7.—The Mongolian princes of hereditary titles should be provided with very liberal allowances.

8.—The pasture-lands beyond Ch'ahar should be given to the Mongolian princes for their own use, except those that have been under cultivation and Government control and which would continue to be so.

9.—The Mongolians, who have a fair knowledge of Chinese and who possess the necessary qualifications required by law, may be appointed to civil and military offices in Peking and the Provinces.



# THE PROVISIONAL CONSTITUTION OF THE REPUBLIC OF CHINA, NANKING, 1912

## I.—GENERAL PROVISIONS.

*Article 1.*—The Republic of China is established by the Chinese people.

*Article 2.*—The sovereignty of the Chinese Republic is vested in the whole body of the people.

*Article 3.*—The territory of the Chinese Republic consists of the twenty-two provinces, Inner and Outer Mongolia, Tibet and Chinghai (Kokonor).

*Article 4.*—The sovereignty of the Chinese Republic is exercised by the National Council, the Provisional President, the Cabinet, and the Judiciary.

## II.—CITIZENS.

*Article 5.*—Citizens of the Chinese Republic are all equal, and there shall be no racial class or religious distinctions.

*Article 6.*—Citizens shall enjoy the following rights :—

- (1) No citizen shall be arrested, imprisoned, tried or punished except in accordance with Law.
- (2) The habitation of any citizen shall not be entered or searched except in accordance with Law.
- (3) Citizens shall enjoy the right of the security of their property and the freedom of trade.
- (4) Citizens shall have the freedom of speech, of publication, and of association.
- (5) Citizens shall have the right of the secrecy of their letters.
- (6) Citizens shall have the liberty of residence and removal.
- (7) Citizens shall have the freedom of religion.

*Article 7.*—Citizens shall have the right of petitioning Parliament.

*Article 8.*—Citizens shall have the right of petitioning the executive officials.

*Article 9.*—Citizens shall have the right to institute proceedings before the Judiciary, and to receive trial and judgment.

*Article 10.*—Citizens shall have the right of suing officials in the Administrative Courts for violation of the law or of their rights.

*Article 11.*—Citizens shall have the right of participating in examinations for official posts.

*Article 12.*—Citizens shall have the right of voting and of standing for election to representative assemblies.

*Article 13.*—Citizens shall have the duty of paying taxes according to Law.

*Article 14.*—Citizens shall have the duty of enlisting as soldiers according to Law.

*Article 15.*—The rights of citizens as provided in the present chapter shall be limited or modified by laws provided such limitation or modification shall be deemed necessary for the promotion of

public welfare, for the maintenance of public order or on account of other urgent necessity.

III.—THE NATIONAL COUNCIL (*Ts'an Yi-Yuen*).

*Article 16.*—The legislative power of the Chinese Republic is exercised by the National Council.

*Article 17.*—The National Council shall be composed of members elected by the several districts as provided in Article 18.

*Article 18.*—The Provinces, Inner and Outer Mongolia, and Tibet shall each elect and depute five members to the National Council, and Chinghai (Kokonor) shall elect one member.

The electoral districts and methods of election shall be decided by the localities concerned.

During the meeting of the National Council each member shall have one vote.

*Article 19.*—The National Council shall have the following powers :—

- (1) To pass the budgets of the Provisional Government.
- (2) To pass measures of taxation, of currency, and of weights and measures for the whole country.
- (4) To pass measures for the incurring of public loans and to conclude agreements affecting the National Treasury.
- (5) To give consent to matters provided in Articles 34, 35, 40.
- (6) To reply to inquiries from the Provisional Government.
- (7) To receive and consider petitions of citizens.
- (8) To make suggestions to the Government on laws or other matters.
- (9) To introduce interpellations to the members of the Cabinet and to insist on their being present in the Council in making replies thereto.
- (10) To insist on Government investigation into any alleged bribery and infringement of laws by officials.
- (11) To impeach the Provisional President if he be held to have acted as a traitor by a majority vote of three-fourths of the members present with a quorum of more than four-fifths of the total number of members.
- (12) To impeach any member of the Cabinet, if he be held to have failed to perform his official duties or to have violated the law by a majority vote of two-thirds of the members present with a quorum of over three-fourths of the total number of members.

*Article 20.*—The National Council may itself convoke, conduct, and adjourn its own meetings.

*Article 21.*—The meeting of the National Council shall be conducted publicly, but meetings may be held in camera at the demand of any member of the Cabinet or of a majority vote.

*Article 22.*—Matters passed by the National Council shall be communicated to the Provisional President for promulgation and execution.

*Article 23.*—If the Provisional President should vote matters passed by the National Council, he shall, within ten days after he has received such resolutions, return the same with stated reasons to the Council for reconsideration. If the same matter

should again be passed by a two-thirds vote of the Council, it shall be dealt in accordance with Article 22.

*Article 24.*—The President of the National Council shall be elected by open ballot of the voting members, and the one who receives more than one-half of the total number of the votes cast shall be elected.

*Article 25.*—Members of the National Council shall not, outside the Council hall, be responsible for their opinions expressed and votes cast in the Council.

*Article 26.*—Members of the Council shall not be arrested without the permission of the President of the Council except for flagrant offences or during internal disturbance or foreign invasion.

*Article 27.*—The procedure of the National Council shall be decided by its own members.

*Article 28.*—The National Council shall be dissolved on the day of the convocation of the National Assembly, and its powers shall be exercised by the latter.

#### IV.—THE PROVISIONAL PRESIDENT AND VICE-PRESIDENT.

*Article 29.*—The Provisional President and Vice-President shall be elected by the National Council, by vote of two-thirds of the members present at a sitting of the Council consisting of over three-fourths of the total number of members.

*Article 30.*—The Provisional President represents the Provisional Government as the fountain of all executive powers and promulgates all laws.

*Article 31.*—The Provisional President may issue or cause to be issued orders for the execution of laws and of powers delegated to him by the law.

*Article 32.*—The Provisional President shall be the Commander-in-Chief of the army and navy of the whole of China.

*Article 33.*—The Provisional President shall ordain and establish the administrative system and official regulations, but he must first submit them to the National Council for its approval.

*Article 34.*—The Provisional President shall appoint and remove civil and military officials, but in the appointment of members of the Cabinet, Ambassadors, and Ministers, he must have the concurrence of the National Council.

*Article 35.*—The Provisional President shall have power, with the concurrence of the National Council, to declare war and conclude treaties.

*Article 36.*—The Provisional President may, in accordance with law, declare a state of siege.

*Article 37.*—The Provisional President shall, representing the whole country, receive Ambassadors and Ministers of foreign countries.

*Article 38.*—The Provisional President may introduce Bills into the National Council.

*Article 39.*—The Provisional President may confer decorations and other insignia of honour.

*Article 40.*—The Provisional President may declare general amnesty, grant special pardon, commute a punishment, and restore



rights, but in the case of a general amnesty he must have the concurrence of the National Council.

*Article 41.*—In case the Provisional President is impeached by the National Council, he shall be tried by a Special Court consisting of nine judges elected among the justices of the supreme court of the realm.

*Article 42.*—If the Provisional President vacates his office from any cause, or is unable to discharge the powers and duties of the said office, the Provisional Vice-President shall attend to his duties.

#### V.—MINISTERS OF STATE.

*Article 43.*—The Premier and the heads of the Government Departments shall be called Ministers.

*Article 44.*—Ministers of State shall assist the Provisional President in assuming responsibilities.

*Article 45.*—Ministers of State shall countersign all Bills introduced by the Provisional President and all laws and orders issued by him.

*Article 46.*—Ministers of State and their deputies may be present and speak in the National Council.

*Article 47.*—If any Minister of State is impeached by the National Council, the Provisional President may remove him from office, but such removal shall be subject to the reconsideration of the National Council.

#### VI.—COURTS OF JUSTICE.

*Article 48.*—The Judiciary shall be composed of judges appointed by the Provisional President and the Minister of Justice.

The organization of the courts and the qualifications of judges, shall be determined by law.

*Article 49.*—The Judiciary shall try civil and criminal cases, but cases involving administrative affairs or arising from other particular causes, shall be dealt with according to special laws.

*Article 50.*—The trial of cases in the law courts shall be conducted publicly, but those affecting public safety and order may be held in camera.

*Article 51.*—Judges shall be independent and shall not be subject to the interference of higher officials.

*Article 52.*—Judges during their continuance in office shall not have their emoluments decreased and shall not be transferred to other offices, nor shall they be removed from office except when they are convicted of crimes, or of offences punishable according to law by removal from office.

Regulations for the punishment of judges shall be determined by law.

#### VII.—SUPPLEMENTARY ARTICLES.

*Article 53.*—Within ten months after the promulgation of this Provisional Constitution the Provisional President shall convene a National Assembly, the organization of which and the laws for the election of whose members shall be decided by the National Council.

*Article 54.*—The Constitution of the Republic of China shall be adopted by the National Assembly, but before the promulgation

of the Constitution the Provisional Constitution shall have the same force as the Constitution itself.

*Article 55.*—The Provisional Constitution may be amended by the assent of three-fourths of the members of the National Council present at a quorum of two-thirds of the whole number ; or upon the application of the Provisional President by a majority vote of three-fourths at a quorum of the Council of four-fifths of the total number of its members.

*Article 56.*—The present Provisional Constitution shall take effect on the date of its promulgation, and the fundamental articles for the organization of the Provisional Government shall cease to be effective on the same date.

# THE REVISED PROVISIONAL CONSTITUTION

(Promulgated on May 1st, 1914, Peking).

## CHAPTER I.—THE NATION.

*Article 1.*—The Chung Hua Min Kuo is organized by the people of Chung Hua.

*Article 2.*—The sovereignty of Chung Hua Min Kuo originates from the whole body of the citizens.

*Article 3.*—The territory of the Chung Hua Min Kuo is the same as that possessed by the former Empire.

## CHAPTER II.—THE PEOPLE.

*Article 4.*—The people of the Chung Hua Min Kuo are all equal in law, irrespective of race, caste, or religion.

*Article 5.*—The people are entitled to the following rights of liberty :—

- (1) No person shall be arrested, imprisoned, tried or punished except in accordance with law.
- (2) The habitation of any person shall not be entered or searched except in accordance with law.
- (3) The people have the right of possession and protection of property and the freedom of trade within the bounds of law.
- (4) The people have the right of freedom of speech, of writing and publication, of meeting and organizing association, within the bounds of law.
- (5) The people have the right of the secrecy of correspondence within the bounds of law.
- (6) The people have the liberty of residence and removal, within the bounds of law.
- (7) The people have freedom of religious belief, within the bounds of law.

*Article 6.*—The people have the right to memorialize the Li Fa Yuan according to the provisions of law.

*Article 7.*—The people have the right to institute proceedings at the judiciary organ in accordance with the provisions of law.

*Article 8.*—The people have the right to petition the Administrative organs and lodge protests with the Administrative Court in accordance with the provisions of law.

*Article 9.*—The people have the right to attend examinations held for securing officials and to join the public service in accordance with the provisions of law.

*Article 10.*—The people have the right to vote and to be voted for in accordance with the provisions of law.

*Article 11.*—The people have the obligation to pay taxes according to the provisions of law.

*Article 12.*—The people have the obligation to serve in a military capacity in accordance with the provisions of law.

*Article 13.*—The provisions made in this Chapter, except when in conflict with the Army or Naval orders and rules, shall be applicable to military and naval men.



## CHAPTER II.—THE PRESIDENT.

*Article 14.*—The President is the Head to the nation, and controls the power of the entire administration.

*Article 15.*—President represents the Chung Hua Min Kuo.

*Article 16.*—President is responsible to the entire body of citizens.

*Article 17.*—The President convokes the Li Fa Yuan, declares the opening, the suspension and the closing of the sessions.

The President may dissolve the Li Fa Yuan with the approval of the Tsan Cheng Yuan ; but in that case he must have the new members elected and the House convoked within six months from the day of dissolution.

*Article 18.*—The President shall submit Bills of Law and the Budget to the Li Fa Yuan.

*Article 19.*—For the purposes of improving the public welfare of enforcing law or in accordance with the duties imposed upon him by law, the President may issue orders and cause orders to be issued, but he shall not alter the law by his order.

*Article 20.*—In order to maintain public peace or to prevent extraordinary calamities at a time of great emergency when time will not permit the convocation of the Li Fa Yuan, the President may, with the approval of the Tsan Cheng Yuan, issue provisional orders which shall have the force of law ; but in that case he shall ask the Li Fa Yuan for indemnification at its next session.

The provisional orders mentioned above shall immediately become void when they are rejected by the Li Fa Yuan.

*Article 21.*—The President shall fix the official systems and official regulations. The President shall appoint and dismiss military and civil officials.

*Article 22.*—The President shall declare war and conclude peace.

*Article 23.*—The President is the Commander-in-Chief of, and controls, the Army and Navy of the whole country. The President shall decide the system of organization and the respective strength of the Army and Navy.

*Article 24.*—The President shall receive the Ambassadors and Ministers of the foreign countries.

*Article 25.*—The President makes treaties.

But the approval of the Li Fa Yuan must be secured if the articles should change the territories or increase the burdens of the citizens.

*Article 26.*—The President may, according to law declare Martial law.

*Article 27.*—The President may confer titles of nobility, decorations, and other insignia of honour.

*Article 28.*—The President may declare general amnesty, special pardon, commutation of punishment, or restoration of rights. In case of general amnesty the approval of the Li Fa Yuan must be secured.

*Article 29.*—When the President, for any cause, vacates his post or is unable to attend to his duties, the Vice-President shall assume his duties and authority in his stead.

## CHAPTER IV.—THE LEGISLATURE.

*Article 30.*—Legislation shall be done by the Legislature organized with the members elected by the people.

The organization of the Legislature and the method of electing the legislative members shall be fixed by the Provisional Constitution Conference.

*Article 31.*—The duties and authorities of the Li Fa Yuan shall be as follows :

- (1) To discuss and pass all bills of law.
- (2) To discuss and pass the Budget.
- (3) To discuss and pass or approve articles relating to raising of public loans and national financial responsibilities.
- (4) To reply to the inquiries addressed to it by the Government.
- (5) To receive petitions of the people.
- (6) To bring up bills of law.
- (7) To bring up suggestions and opinions before the President regarding law and other affairs.
- (8) To bring out the doubtful points of the administration and request the President for an explanation ; but when the President deems it necessary for a matter to be kept secret he may refuse to give the answer.
- (9) Should the President attempt treason the Li Fa Yuan may institute judicial proceedings in the Supreme Court against him by a three-fourths or more vote of a four-fifths attendance of the total membership.

Regarding the clauses from 1 to 8 and articles 20, 25, 28, 55 and 27, the approval of a majority of more than half of the attending members will be required to make a decision.

*Article 32.*—The regular annual session of the Li Fu Yuan will be four months in duration ; but when the President deems it necessary it may be prolonged. The President may also call special sessions when it is not in session.

*Article 33.*—The meetings of the Li Fa Yuan shall be "open session," but they may be held in secret at the request of the President or the decision of the majority of more than half of the members present.

*Article 34.*—The law bills passed by the Li Fa Yuan shall be promulgated by the President and enforced.

When the President vetoes a law bill passed by the Li Fa Yuan he must give the reason and refer it again to the Li Fa Yuan for reconsideration. If such bill should be again passed by a two-thirds vote of the members present at the Li Fa Yuan but at the same time the President should firmly hold that it would greatly harm the internal administration or diplomacy to enforce such law or there will be great and important obstacles against enforcing it, he may withhold promulgation with the approval of the Tsan Cheng Yuan.

*Article 35.*—The Speaker and vice-Speaker of the Li Fa Yuan shall be elected by and from among the members themselves by ballot. The one who secures more than half of the votes cast shall be considered elected.

*Article 36.*—The members of the Li Fa Yuan shall not be held responsible to outsiders for their speeches, arguments and voting in the House.

*Article 37.*—Except when discovered in the act of committing a crime or for internal rebellion or external treason, the members of the Li Fa Yuan shall not be arrested during the session period without the permission of the House.

*Article 38.*—The House laws of the Li Fa Yuan shall be made by the House itself.

#### CHAPTER V.—THE ADMINISTRATION.

*Article 39.*—The President shall be the Chief of the Administration. A Secretary of State shall be provided to assist him.

*Article 40.*—The affairs of the Administration shall be separately administered by the Ministries of Foreign Affairs, of Interior, of Finance, of Army, of Navy, of Law, of Education, of Agriculture and Commerce, and of Communications.

*Article 41.*—The Minister of each Ministry shall control the affairs in accordance with law and orders.

*Article 42.*—Secretary of State, Ministers of the Ministries and the special representative of the President may take seats in the Li Fa Yuan and express their views.

*Article 43.*—The Secretary of State or any of the Ministers when they commit a breach of law shall be liable to impeachment by the Censorate (Suchengting) and trial by the Administrative Court.

#### CHAPTER VI.—THE JUDICIARY.

*Article 44.*—The judicial power shall be administered by the Judiciary formed by the judicials appointed by the President.

The organization of the Judiciary and the qualifications of the judicial officials shall be fixed by law.

*Article 45.*—The Judiciary shall independently try and decide cases of civil and criminal law suits according to law. But with regard to administrative law suits and other special law cases they shall be attended to according to the provisions of this law.

*Article 46.*—As to the procedure the Supreme Court should adopt for the impeachment case stated in clause 9 of article 31, special rules will be made by law.

*Article 47.*—The trial of law suits in the judicial courts should be open to the public, but when they are deemed to be harmful to peace and order or good custom, they may be held in camera.

*Article 48.*—The judicial officials shall not be given a reduced salary or shifted from their posts when functioning as such, and except when a sentence has been passed upon him for punishment or he is sentenced to be removed, a judicial official shall not be dismissed from his post.

The regulations regarding punishment shall be fixed by law.

#### CHAPTER VII.—THE TSAN CHENG YUAN.

*Article 49.*—The Tsan Cheng Yuan shall answer the inquiries of the President and discuss important administrative affairs.

The organization of the Tsan Cheng Yuan shall be fixed by the Provisional Constitution Conference.



## CHAPTER VIII.—FINANCES.

*Article 50.*—Levying of new taxes and dues and changes of tariff shall be decided by law.

The taxes and dues which are now in existence shall continue to be collected as of old except as changed by law.

*Article 51.*—With regard to the annual receipts and expenditures of the nation, they shall be dealt with in accordance with the Budget approved by the Li Fa Yuan.

*Article 52.*—For special purposes continuous expenditures for a specified number of years may be included in the budget.

*Article 53.*—To prepare for any deficiency of the budget and expenses needed outside of the estimates in the budget, a special reserve fund must be provided in the budget.

*Article 54.*—The following items of expenditures shall not be cancelled or reduced except with the approval of the President :

- (1) Any duties belonging to the nation according to law.
- (2) Necessities stipulated by law.
- (3) Necessities for the purpose of carrying out the treaties.
- (4) Expenses for the Army and Navy.

*Article 55.*—For national war or suppression of internal disturbance or under unusual circumstances when time will not permit to convoke the Li Fa Yuan, the President may make emergency disposal of finance with the approval of the Tsan Cheng Yuan, but in such case he shall ask the Li Fa Yuan for indemnification at its next session.

*Article 56.*—When a new Budget cannot be established, the Budget of the previous year will be used. The same procedure will be adopted when the Budget fails to pass at the time when the fiscal year has begun.

*Article 57.*—When the closed accounts of the receipts and expenditures of the nation have been audited by the House of Audit, they shall be submitted by the President to the Li Fa Yuan for approval.

*Article 58.*—The organization of the House of Audit shall be fixed by the Provisional Constitution Conference.

## CHAPTER IX.—PROCEDURE OF CONSTITUTION MAKING.

*Article 59.*—The Constitution of Chung Hua Min Kuo shall be drafted by the Constitution Draft Committee, which shall be organized with the members elected by and from among the members of the Tsan Cheng Yuan. The number of such drafting Committee shall be limited to ten.

*Article 60.*—The Bill on the Constitution of Chung Hua Min Kuo shall be fixed by the Tsan Cheng Yuan.

*Article 61.*—When the Bill on the Constitution of the Chung Hua Min Kuo has been passed by the Tsan Cheng Yuan, it shall be submitted by the President to the Citizens' Conference for final passage.

The organization of the Citizens' Conference shall be fixed by the Provisional Constitution Conference.

*Article 62.*—The Citizens' Conference shall be convoked and dissolved by the President.

*Article 63.*—The Constitution of Chung Hua Min Kuo shall be promulgated by the President.

## CHAPTER X.—APPENDIX.

*Article 64.*—Before the Constitution of Chung Hua Min Kuo comes into force this Provisional Constitution shall have equal force to the Permanent Constitution.

The orders and instructions in force before the enforcement of this Provisional Constitution shall continue to be valid, provided that they do not come into conflict with the provisions of this Provisional Constitution.

*Article 65.*—The articles published on the 12th of the Second Month of the First Year of Chung Hua Min Kuo, regarding the favourable treatment of the Ta Ching Emperor after his abdication, and the special treatment of the Ching Imperial Clan, as well as the special treatment of the Manchus, Mongols, Mohammedans and Tibetans shall never lose their effect.

As to the Articles dealing with the special treatment of Mongols in connection with the special treatment articles, it is guaranteed that they shall continue to be effective, and that they will not be changed except by law.

*Article 66.*—This Provisional Constitution may be amended at the request of two-thirds of the members of the Li Fa Yuan, or on the proposal of the President, by a three-fourths majority of a quorum consisting of four-fifths or more of the whole membership of the House. The Provisional Constitution Conference will then be convoked by the President to undertake the amendment.

*Article 67.*—Before the establishment of Li Fa Yuan the Tsan Cheng Yuan shall have the duty and authority of the former and function in its stead.

*Article 68.*—This Provisional Constitution shall come into force from the date of promulgation. The Temporary Provisional Constitution promulgated on the 11th day of the Third Month of the First Year of the Min Kuo shall automatically cease to have force from the date on which this Provisional Constitution comes into force.

# CONSTITUTION OF THE REPUBLIC OF CHINA

(Proclaimed on October 10th, 1923).

*Translated and published by the Commission on Extraterritoriality, Peking.*

We, the Constitution Conference of the Republic of China, in order to make manifest and foster the national dignity, stabilize the national boundaries, promote the general welfare, and defend the principles of humanity, do make this Constitution and proclaim it to the whole country, to be observed by all and for ever.

## CHAPTER I.—FORM OF GOVERNMENT.

*Article 1.*—The Republic of China shall be a unified Republic for ever.

## CHAPTER II.—SOVEREIGNTY

*Article 2.*—The sovereignty of the Republic of China is vested in the people as a whole.

## CHAPTER III.—TERRITORY.

*Article 3.*—The territory which originally belonged to the Republic shall be the territory of the Republic of China.

The territory and the division of it into areas shall not be altered except by law.

## CHAPTER IV.—CITIZENS.

*Article 4.*—All persons who according to law belong to the nationality of the Republic of China are citizens of the Republic of China.

*Article 5.*—Citizens of the Republic of China shall be equal before the law, without distinction of race, class or religion.

*Article 6.*—Citizens of the Republic of China shall not be arrested, imprisoned, tried or punished except in accordance with law.

Any citizen under arrest may, in accordance with law, apply to the court by a "Petition for Protection" to have his person delivered thereto and the cause tried thereat.

*Article 7.*—The residences of citizens of the Republic of China shall not be entered or searched except in accordance with law.

*Article 8.*—The secrecy of letters and correspondence of citizens of the Republic of China shall not be violated except in accordance with law.

*Article 9.*—A citizen of the Republic of China shall be free to choose his residence and occupation; such freedom shall not be restricted except in accordance with law.

*Article 10.*—A citizen of the Republic of China shall be free to assemble and to form societies; such freedom shall not be restricted except in accordance with law.

*Article 11.*—A citizen of the Republic of China shall be entitled to freedom of speech, authorship and publication; such freedom shall not be restricted except in accordance with law.



*Article 12.*—A citizen of the Republic of China shall be free to honour Confucius and to profess any religion, such freedom shall not be restricted except in accordance with law.

*Article 13.*—The right of ownership of a citizen of the Republic of China shall be inviolable; provided that any necessary disposition for the public benefit may be made in accordance with law.

*Article 14.*—Liberties of the citizens of the Republic of China other than those provided for in this Chapter are recognized; provided that such liberties are not contrary to the principles of Constitutional Government.

*Article 15.*—A citizen of the Republic of China shall have the right to institute and carry on legal proceedings in a court of justice in accordance with law.

*Article 16.*—A citizen of the Republic of China shall have the right to petition Parliament or the Administration in accordance with law.

*Article 17.*—A citizen of the Republic of China shall have the right to vote and to be a candidate for election in accordance with law.

*Article 18.*—A citizen of the Republic of China shall have the right to hold office in the public service in accordance with law.

*Article 19.*—A citizen of the Republic of China shall have the duty to pay taxes in accordance with law.

*Article 20.*—A citizen of the Republic of China shall have the duty to undertake military service in accordance with law.

*Article 21.*—A citizen of the Republic of China shall have the duty to receive elementary education in accordance with law.

#### CHAPTER V.—PUBLIC POWERS.

*Article 22.*—Of the public powers of the Republic of China, those relating to the National affairs shall be exercised in accordance with the provisions of this Constitution; and those relating to local affairs, in accordance with the provisions of this Constitution and the Law of Self-government of the Province.

*Article 23.*—The following matters shall be legislated upon and executed by the Republic:

- (1) Foreign relations.
- (2) National defence.
- (3) Nationality law.
- (4) Criminal, civil and commercial laws.
- (5) Prison system.
- (6) Weights and measures.
- (7) Currency and National banks.
- (8) Customs duty, salt tax, stamp tax, tobacco and wine taxes, and other consumption taxes and other taxes the rates of which shall be uniform throughout the country.
- (9) Posts, telegraphs and aviation.
- (10) National railways and Roads.
- (11) National property.
- (12) National debts.
- (13) Monopolies and licenses.

- (14) Examination, appointment, investigation and protection of the civil and military officials of the country.
- (15) Other matters which, according to the provisions of this Constitution, relate to the Republic.

*Article 24.*—The following matters shall be legislated upon by the Republic and shall be executed by the Republic or, under its order, by the local areas :

- (1) Agriculture, industry, mining and forestry.
- (2) The educational system.
- (3) The banking and exchange system.
- (4) Navigation and coast fisheries.
- (5) Irrigation and conservancy concerned with and waterways extending to two or more Provinces.
- (6) General regulations relating to municipalities.
- (7) Eminent domain.
- (8) The national census and statistics.
- (9) Immigration, emigration, reclamation and colonization.
- (10) The police system.
- (11) Public sanitation.
- (12) Relief work and administration of unemployed persons.
- (13) Preservation of such ancient books, objects and remains as are of historic, cultural or scientific interest.

A Province may enact local laws relating to the above subdivisions ; provided that they shall not be contrary to the National laws. A Province may, pending legislation by the Republic, legislate upon the matters specified in subdivisions (1), (4), (10), (12) and (13).

*Article 25.*—The following matters shall be legislated upon by a Province and shall be executed by such Province or, under its order, by a District (Hsien) :

- (1) Provincial education, industry and communications.
- (2) Management and disposal of Provincial properties.
- (3) Municipal affairs of the Province.
- (4) Provincial irrigation, conservancy and engineering works.
- (5) The land tax, title-deed tax and other Provincial taxes.
- (6) Provincial debts.
- (7) Provincial banks.
- (8) Provincial police and matters relating to public safety.
- (9) Provincial philanthropic work and work for public benefit.
- (10) Self-government of the lower grade.
- (11) Other matters assigned by National laws.

Where any of the matters above referred to concerns two or more Provinces, it may be undertaken by them jointly, unless it is otherwise provided by law. When the funds are insufficient, the deficit may, with the approval of Parliament, be made good from the National treasury.

*Article 26.*—When any matter not specified in Articles 23, 24 and 25 arises, it shall be a matter of the Republic if by its nature it concern the Republic, and of a Province if by its nature it concern the Province. Any controversy arising in this connection shall be decided by the highest court of justice.

*Article 27.*—The Republic may, in order to obviate the following evils, or when necessary for the promotion of public welfare, restrict by law any Provincial tax and its method of collection :

- (1) Impairment of the National revenue or commerce.
- (2) Double taxes.
- (3) Excessive fees, or fees detrimental to communications, charged for the use of public roads or other means of communication.
- (4) Taxes imposed by the Provinces or other local areas, detrimental to goods imported therein, for the purpose of protecting their local products.
- (5) Duties imposed by the Provinces or other local areas for the transit of goods.

*Article 28.*—A Provincial law conflicting with a National law shall be void.

When doubt arises as to whether a Provincial law conflicts with a National law, interpretation shall lie with the highest court of justice.

The foregoing provision in the matter of interpretation shall apply when a Provincial Self-government Law conflicts with a National law.

*Article 29.*—In case of a deficit in the National budget or financial stringency, the Provinces may, with the approval of Parliament, be required to share the burden at rates increasing progressively with their annual revenues.

*Article 30.*—In the event of financial deficiency or extraordinary calamity, the locality concerned may, with the approval of Parliament, be subsidized by the National treasury.

*Article 31.*—Controversies between Provinces shall be decided by the Senate.

*Article 32.*—The organization of the National army shall be based upon a system of compulsory citizen service. The Provinces shall, in general, have no military duty other than that of the execution of matters provided by the law of military service.

Citizens liable for military service shall be recruited and trained for different periods in the recruiting areas of the whole country ; but the stationing of standing armies shall be restricted to the areas required for National defence.

The military expenses of the Republic shall not exceed one quarter of the National annual expenditure ; provided that this provision shall not apply in case of war with any foreign country.

The strength of the National army shall be determined by Parliament.

*Article 33.*—No Province shall enter into any political alliance. No Province shall take any action detrimental to the interests of another Province or any other local area.

*Article 34.*—No Province shall keep any standing army or establish any military academy or arsenal.

*Article 35.*—If any Province fail to perform its duty as provided by a National law and refuse to obey after a warning by the Republic, the Republic may, with the National power, compel performance.



The aforesaid measure shall be stopped when it is disapproved by Parliament.

*Article 36.*—In the event of an invasion with military force by one Province of another, the Government may intervene in accordance with the provisions of the last preceding article.

*Article 37.*—In the event of a change of the form of government or the destruction of the fundamental organization under the Constitution, the Provinces shall, until the original condition is restored, adopt and carry out joint measures to maintain the organization provided by the Constitution.

*Article 38.*—The provisions of this Chapter relating to Provinces shall apply to localities where Districts (Hsiens), but not Provinces, have been established.

#### CHAPTER VI.—PARLIAMENT.

*Article 39.*—The legislative power of the Republic of China shall be exercised by Parliament.

*Article 40.*—Parliament shall consist of a Senate and a House of Representatives.

*Article 41.*—The Senate shall be composed of members elected by the highest local assemblies and other legally constituted electoral bodies.

*Article 42.*—The House of Representatives shall be composed of members elected by the electoral districts, the number of members elected in a district being proportional to its population.

*Article 43.*—The election of members of both Houses shall be regulated by law.

*Article 44.*—No person shall be a member of both Houses simultaneously.

*Article 45.*—No member of either House shall concurrently hold office as a civil or military official.

*Article 46.*—Each House may examine the qualifications of its own members.

*Article 47.*—The term of office for a member of the Senate shall be six years. One third of the members shall be elected every two years.

*Article 48.*—The term of office for a member of the House of Representatives shall be three years.

*Article 49.*—Members referred to in Articles 47 and 48 shall, after the completion of a new election, not be relieved of their duties until the day before the opening of the session in accordance with law.

*Article 50.*—Each House shall have a Speaker and a Vice-Speaker who shall be elected from among its own members.

*Article 51.*—Each House shall itself convene, open and close its session; provided that extraordinary sessions shall be called under any of the following circumstances:

- (1) Upon the joint notice of one-third or more of the members of each House.
- (2) At the summons of the President.

*Article 52.*—The ordinary session of Parliament shall be opened on the first day of August in each year.

*Article 53.*—The period of the ordinary session shall be four months ; such period may be extended, provided that the extension shall not exceed the period of an ordinary session.

*Article 54.*—The opening and closing of sessions shall take place simultaneously in both Houses.

When one House is suspended, the other House shall simultaneously adjourn.

When the House of Representatives is dissolved, the Senate shall simultaneously adjourn.

*Article 55.*—Deliberations shall take place in the two Houses separately.

No bill shall be introduced simultaneously in both Houses.

*Article 56.*—No deliberation shall commence in either House unless more than half of its members are present.

*Article 57.*—Deliberations in either House shall be decided by the vote of more than half of the members present. In the event of a tie, the Speaker shall have a casting vote.

*Article 58.*—An identical decision of both Houses shall be the decision of Parliament.

*Article 59.*—The sittings of the two Houses shall be open to the public ; provided that they may, at the request of the Government or by decision of the House, be closed to the public.

*Article 60.*—When the House of Representatives considers that the President or Vice-President is guilty of any treasonable act, he may be impeached by the votes of two-thirds of the members present ; provided that two-thirds of the members shall be present.

*Article 61.*—When the House of Representatives considers that a Cabinet Minister is guilty of any act contrary to law, he may be impeached by the votes of two-thirds of the members present.

*Article 62.*—The House of Representatives may pass a vote of non-confidence against a Cabinet Minister.

*Article 63.*—An impeached President, Vice-President or Cabinet Minister shall be tried by the Senate.

The decision that the person tried under the provisions of the above paragraph is guilty of a crime or has violated the law shall not be pronounced without the concurrence of two-thirds of the members present.

When the President or Vice-President is adjudged guilty of a crime, he shall be removed from his office ; but the punishment to be inflicted shall be determined by the highest court of justice.

When a Cabinet Minister is adjudged to have violated the law, he shall be removed from his office and may also be deprived of his public rights. If he is guilty of a crime, he shall be delivered to a court of justice to be tried.

*Article 64.*—Each House may request the Government to institute an investigation in the matter of the conduct of an official acting contrary to law or to duty.

*Article 65.*—Each House may make proposals to the Government.

*Article 66.*—Each House may receive petitions of citizens.

*Article 67.*—Members of either House may address an interpellation to a Cabinet Minister or ask him to appear in the House to answer an interpellation.

**Article 68.**—Members of either House shall not be held responsible outside of the House for opinions expressed or for votes cast in the House.

**Article 69.**—A member of either House shall, during the session, not be arrested or kept under surveillance without the permission of the House except where taken *in flagrante delicto*.

When a member of either House is arrested *in flagrante delicto*, the Government shall at once report the cause to the House; but the House may, by its decision, ask for a suspension of judicial proceedings during the session and the surrender of the arrested member to the House.

**Article 70.**—The annual allowances of the members of both Houses and the expenses shall be determined by law.

#### CHAPTER VII.—PRESIDENT.

**Article 71.**—The executive power of the Republic of China shall be exercised by the President with the assistance of the Cabinet Ministers.

**Article 72.**—Any citizen of the Republic of China forty or more years old, in full enjoyment of civil rights, and resident in the country for ten years or more, shall be eligible as President.\*

**Article 73.**—The President shall be elected by a Presidential Electoral College composed of all the members of Parliament.

The election above referred to shall be held by secret ballot; provided always that two-thirds of the electors shall be present. The person who obtains three-fourths of the total votes shall be elected; provided that in the event of no one being elected after a second vote, a further vote shall be taken upon the two persons obtaining the highest numbers of votes in the second vote, and the one who obtains a majority vote shall be elected.

**Article 74.**—The term of office of the President shall be five years. In case of re-election, he may hold office for a second term.

Three months prior to the expiration of the term of office of the President, the members of Parliament shall themselves convene and organize a Presidential Electoral College for the election of a President for the following term.

**Article 75.**—When the President assumes office, he shall take oath as follows:

I hereby solemnly swear that I will most faithfully observe the Constitution and perform the duties of the President.

**Article 76.**—In the event of the office of the President becoming vacant, the Vice-President shall succeed until the expiration of the term of office of the President.

In the event of the President being unable for any reason to perform his duties, the Vice-President shall act in his place.

If the office of the Vice-President is also vacant, the Cabinet shall act for the President. In such event, the members of Parliament shall themselves within three months convene and organize a Presidential Electoral College to elect the next President.

**Article 77.**—The President shall be relieved of his office at the expiration of his term of office. If at the time a new President has

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\*Articles 72-78 were proclaimed on October 4th of the 2nd year of the Republic.



not yet been elected, or has been elected but has not assumed his office, and the new Vice-President is also unable to act as President, the Cabinet shall act for him.

*Article 78.*—The election of the Vice-President shall be held in accordance with the provisions relating to the election of the President and shall take place at the same time. In the event of the Vice-Presidency becoming vacant, a new Vice-President shall be elected.

*Article 79.*—The President shall promulgate laws and supervise and secure their execution.

*Article 80.*—The President may issue mandates for the execution of laws or in pursuance of the authority delegated to him by law.

*Article 81.*—The President shall appoint and dismiss civil and military officials; provided that this provision shall not apply where this constitution or the law otherwise provides.

*Article 82.*—The President shall be the Commander-in-Chief of the army and navy of the Republic and shall be in command thereof. The organization of the army and navy shall be prescribed by law.

*Article 83.*—The President shall be the representative of the Republic with regard to foreign powers.

*Article 84.*—The President may, with the approval of Parliament, declare war; provided that in the matter of defence against foreign invasion, he may request the approval of Parliament after the declaration of war.

*Article 85.*—The President may conclude treaties; provided that treaties of peace and those relating to legislative matters shall not be valid without the approval of Parliament.

*Article 86.*—The President may proclaim Martial Law in accordance with law; provided that if Parliament considers that there is no such necessity, he shall forthwith proclaim the withdrawal of Martial Law.

*Article 87.*—The President may, with the approval of the highest court of justice, remit or reduce punishments and restore civil rights; provided that with regard to a decision in an impeachment case, no restoration of civil rights shall be declared without the approval of the Senate.

*Article 88.*—The President may suspend the session of the House of Representatives or the Senate; provided that no session shall be suspended more than twice and no suspension shall exceed ten days.

*Article 89.*—When a vote of non-confidence has been passed against a Cabinet Minister, the President shall either remove the Cabinet Minister from office or dissolve the House of Representatives; provided that the House of Representatives shall not be dissolved without the consent of the Senate.

During the tenure of office of the same Cabinet Minister or during the same session, no dissolution shall take place a second time.

When the President dissolves the House of Representatives, he shall forthwith order a new election and fix a date, within five months, for the convocation of the House to continue the session.

*Article 90.*—The President shall not, for any offence other than treason, be liable to criminal proceedings before he has vacated his office.

*Article 91.*—The annual salaries of the President and the Vice-President shall be fixed by law.

#### CHAPTER VIII.—CABINET.

*Article 92.*—The Cabinet shall be composed of Cabinet Ministers.

*Article 93.*—The Premier and the Ministers of the various Ministries shall be Cabinet Ministers.

*Article 94.*—The Premier shall be appointed with the approval of the House of Representatives.

In the event of the Premiership becoming vacant when Parliament is not in session, the President may appoint an acting Premier ; provided that the nomination of the next Premier shall, within seven days after the opening of the next session of Parliament, be submitted to the House of Representatives for approval.

*Article 95.*—The Cabinet Ministers shall assist the President and are responsible to the House of Representatives.

The mandates of the President and other documents concerning state affairs shall not be valid without the counter-signature of a Cabinet Minister ; provided that this provision shall not apply to the appointment and dismissal of a Premier.

*Article 96.*—A Cabinet Minister may appear and speak in both Houses ; provided that he may, for the purpose of making explanations of bills introduced by the Government, depute delegates to act for him.

#### CHAPTER IX.—JUDICIARY.

*Article 97.*—The judicial power of the Republic of China shall be exercised by courts of justice.

*Article 98.*—The organization of the judiciary and the qualifications for judicial officials shall be prescribed by law.

The President of the highest court of justice shall be appointed with the approval of the Senate.

*Article 99.*—Courts of justice shall, in accordance with law, accept and deal with civil, criminal, administrative and all other cases ; provided that this provision shall not apply where this Constitution or any law otherwise provides.

*Article 100.*—Trials in a court of justice shall be conducted in public ; provided that they may be held in camera when it is considered necessary for public peace or public morals.

*Article 101.*—A judicial official shall try and decide cases independently ; no person whatsoever shall interfere.

*Article 102.*—A judicial official shall not, during his tenure of office, be subjected to a reduction of salary, suspension from office or transference to another office otherwise than in accordance with law.

A judicial official shall not, during his tenure of office, be removed from his office unless he has been convicted of a crime or subjected to disciplinary punishment ; provided that these provisions shall not apply in a case of an alteration in the organization of the judiciary or of the qualifications for entry thereto.

The disciplinary punishment of judicial officials shall be prescribed by law.

#### CHAPTER X.—LAW.

*Article 103.*—Members of the two Houses and the Government may introduce bills ; provided that if a bill is rejected by either House, it shall not be reintroduced during the same session.

*Article 104.*—A bill passed by Parliament shall be promulgated by the President within fifteen days after its transmission to him.

*Article 105.*—If the President disapproves a bill passed by Parliament, he may, within the period for promulgation, state the reasons and request Parliament to reconsider. If the two Houses adhere to their original decision, the bill shall be promulgated forthwith.

If a bill has not been submitted for reconsideration and the period for promulgation has expired, it shall forthwith become law ; provided that this provision shall not apply when the session of Parliament is closed or the House of Representatives is dissolved before the expiration of the period for promulgation.

*Article 106.*—Law shall not be altered or repealed otherwise than by law.

*Article 107.*—When a resolution passed by Parliament is submitted for reconsideration, the provisions relating to bills shall apply.

*Article 108.*—A law in conflict with the Constitution shall be void.

#### CHAPTER XI.—FINANCE.

*Article 109.*—The imposition of new taxes and alterations in the rates of taxes shall be made by law.

*Article 110.*—The approval of Parliament shall be obtained for the floating of National loans and the conclusion of agreements increasing the burdens of the National treasury.

*Article 111.*—The House of Representatives shall have the right to deliberate first on a financial bill directly affecting the burdens of the citizens.

*Article 112.*—A budget shall be made annually by the Government of the annual expenditures and revenues of the Republic. The budget shall be submitted first to the House of Representatives within fifteen days after the opening of the session of Parliament.

If the Senate amends or rejects a budget passed by the House of Representatives, the concurrence of the House of Representatives shall be obtained ; if no such concurrence is obtained, the bill as originally passed shall forthwith become the budget.

*Article 113.*—The Government may, for special undertakings, provide in the budget continuing expenditure funds for a previously fixed number of years.

*Article 114.*—The Government may provide a reserve fund to supply deficiencies in the budget or requirements unprovided for in the same.

Any defrayment made out of the reserve fund shall be submitted during the next session to the House of Representatives for subsequent approbation.



*Article 115.*—The following items of expenditure shall not be stricken off or reduced by Parliament without the concurrence of the Government :

- (1) Expenditures legally due from the Government as obligations.
- (2) Expenditures necessary to carry out treaties.
- (3) Expenditures made necessary by provisions of law.
- (4) Continuing expenditure funds.

*Article 116.*—Parliament shall not increase the expenditures in the budget.

*Article 117.*—After the commencement of a fiscal year and before the passing of the budget, the monthly expenditures of the Government shall be one-twelfth of the amount allowed in the budget for the previous year.

*Article 118.*—The Government may adopt financial emergency measures on account of a war of defence against a foreign power, suppression of internal troubles, or relief for an extraordinary calamity when the urgency of the situation makes it impossible to summon Parliament ; provided that such measures shall be submitted to Parliament for subsequent approbation within seven days after the opening of the next session.

*Article 119.*—An order for payment of an annual expenditure of the Republic shall first be referred to the Board of Audit for aproval.

*Article 120.*—The final account of the annual expenditures and revenues of the Republic shall be verified and confirmed each year by the Board of Audit and reported by the Government to Parliament.

If the House of Representatives rejects such final account or a bill for subsequent approbation,\* the Cabinet Minister concerned shall be responsible.

*Article 121.*—The organization of the Board of Audit and the qualifications of auditors shall be determined by law.

An auditor shall not, during his tenure of office, be subjected to a reduction of salary, a suspension of his functions or a transference of office except in accordance with law

The disciplinary punishment of auditors shall be prescribed by law.

*Article 122.*—The President of the Board of Audit shall be elected by the Senate.

The President of the Board of Audit may, in any matter relating to the report of the account, appear and speak in the two Houses.

*Article 123.*—A budget or a bill for subsequent approbation\* shall, when it has been passed by Parliament, be promulgated by the President after its transmission to him.

## CHAPTER XII.—LOCAL SYSTEM.

*Article 124.*—Local areas are of two grades, the Provinces and the Districts (Hsiens).

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\*Bill for subsequent approbation refers to Articles 114 and 118.

*Article 125.*—A Province may, in accordance with the provisions of Article 22 of Chapter V of this Constitution, make Provincial Self-government Law ; provided that such law shall not conflict with the Constitution and the National laws.

*Article 126.*—The Provincial Self-government Law shall be made by the Provincial Self-Government Law Conference composed of delegates elected by the Provincial Assembly, District Assemblies and legally constituted professional associations of the Province.

Each District Assembly shall elect one delegate. The number of delegates elected by the Provincial Assembly as well as those elected by the legally constituted professional associations shall not exceed one half of the total number of delegates elected by District Assemblies ; provided that candidates for election by Provincial Assemblies and District Assemblies shall not be limited to members of the respective Assemblies. The election shall be regulated by Provincial law.

*Article 127.*—The following provisions shall apply to all Provinces :

- (1) A Province shall have a Provincial Assembly which shall be a unicameral representative body. The members of such Assembly shall be elected by direct election.
- (2) A Province shall have a Provincial Administrative Council which shall administer all matters of Provincial Self-government. Such Council shall be composed of from five to nine Council-men directly elected by the citizens of the Province. Their term of office shall be four years. Before a direct election is possible, an electoral college may be organized in accordance with the provisions of the last preceding article to elect such members ; provided that a person in military service shall not be eligible unless he has been relieved of office for at least one year.
- (3) A Provincial Administrative Council shall have a Chairman who shall be elected from among the Council-men.
- (4) Citizens of the Republic of China who have resided in the Province for one year or more shall be equal before the law of the Province and be in full enjoyment of civil rights.

*Article 128.*—The following provisions shall apply to all Districts :

- (1) A District shall have a District Assembly which shall have legislative power over all matters of self-government in the District.
- (2) A District shall have a Magistrate who shall be directly elected by the citizens of the District, and shall, with the assistance of the District Council, administer all matters of District self-government ; provided that this provision shall not apply before the judiciary shall have become independent and the system of self-government of the lower grade shall have become complete.
- (3) A District shall have the right to retain a portion of the Provincial taxes raised in the District ; provided that such portion shall not exceed forty per cent. of the whole amount.

- (4) The Provincial Government shall not dispose of the property of the Districts or their self-government funds.
- (5) A District may, in case of a natural or any other calamity, or on account of shortage of funds for self-government, apply to the Provincial Administrative Council; and may, with the approval of the Provincial Assembly, receive subsidies from the Provincial treasury.
- (6) A District shall have the duty to enforce the National and Provincial laws and ordinances.

*Article 129.*—The separation of the Provincial and District taxes shall be determined by the Provincial Assembly.

*Article 130.*—A Province shall not enforce special laws against one or more Districts; provided that this provision shall not apply to laws concerning the general interests of the whole Province.

*Article 131.*—A District shall have full power to execute matters of self-government. The Province shall not interfere except in matters of disciplinary punishment prescribed by Provincial laws.

*Article 132.*—National administrative matters in a Province or a District may, as well as being executed by officials appointed by the Republic, be entrusted to the self-government organs of the Province or District.

*Article 133.*—If a self-government organ of a District or Province in the execution of any administrative matter of the Republic violates a law or ordinance, the Republic may, in accordance with law, inflict a disciplinary punishment upon it.

*Article 134.*—The provisions of this Constitution shall apply to areas where Districts, but not Provinces, have been established.

*Article 135.*—Inner and Outer Mongolia, Tibet and Chinghai may, in compliance with the common wish of the people of the area, be divided into two grades, the Province and the Districts, and be governed by the provisions of this Chapter; provided that, pending the establishment of the Province and Districts, their administrative systems shall be prescribed by law.

### CHAPTER XIII.—THE AMENDMENT, INTERPRETATION AND VALIDITY OF THE CONSTITUTION.

*Article 136.*—Parliament may make proposals for an amendment to the Constitution.

Such proposals shall not be made without the concurrence of two-thirds or more of the members present in each House.

The members of either House shall not make a motion for a proposal to amend the Constitution unless such motion is signed by one-fourth of all the members of the House.

*Article 137.*—An amendment to the Constitution shall be made by the Constitution Conference.

*Article 138.*—The form of government shall not be the subject of amendment.

*Article 139.*—If there is any doubt about the meaning of the Constitution, interpretation shall be made by the Constitution Conference.

*Article 140.*—The Constitution Conference shall be composed of the members of Parliament.



The aforesaid Conference shall not commence to deliberate without the presence of two-thirds of all the members, and shall not make any decision without the concurrence of three-fourths of the members present; provided that in matters of interpretation, decisions may be made with the concurrence of two-thirds of the members present.

*Article 141.*—The Constitution shall, under no circumstances, lose its validity otherwise than in accordance with the procedure of amendment prescribed by this Chapter.

## THE LAW OF THE ORGANIZATION OF PARLIAMENT\*

(Promulgated August 10th, 1912).

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 2.**—The Senate shall be composed of the following Senators :

- (1) Ten Senators elected by the Provincial Assembly of each Province ;
- (2) Twenty-seven, by the Mongolian Electoral Colleges ;
- (3) Ten, by the Electoral Colleges of Tibet ;
- (4) Three, by the Electoral College of Chinghai ;
- (5) Eight, by the Central Association of Scholars ;
- (6) Six, by the Electoral College of Chinese Resident Abroad.

**Article 4.**—The number of Representatives to be returned from each Province shall be proportional to the population of the Province. One Representative shall be returned for each 800,000 of the population ; provided that any Province which has a population of less than 8,000,000 shall nevertheless be entitled to ten Representatives.

Until a complete census is taken, the number of Representatives to be returned from each Province shall be as follows :

Chihli .. ..	46	Shantung .. ..	33
Fengtien .. ..	16	Honan .. ..	32
Kirin .. ..	10	Shansi .. ..	28
Heilungkiang .. ..	10	Shensi .. ..	21
Kiangsu .. ..	40	Kansu .. ..	14
Anhui .. ..	27	Sinkiang .. ..	10
Kiangsi .. ..	35	Szechuan .. ..	35
Chekiang .. ..	38	Kwangtung .. ..	30
Fukien .. ..	24	Kwangsi .. ..	19
Hupeh .. ..	26	Yunnan .. ..	22
Hunan .. ..	27	Kueichow .. ..	13

**Article 5.**—The numbers of Representatives to be returned from Mongolia, Tibet and Chinghai shall be as follows :

Mongolia .. ..	27	Chinghai .. ..	3
Tibet .. ..	10		

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\*Most of the provisions in the Law of the Organization of Parliament have either been embodied in the Constitution promulgated in October of 1923 or have ceased to be in force owing to their incompatibility with its provisions. Such provisions are, therefore, omitted in this translation.

# REGULATIONS GOVERNING MUNICIPAL SELF-GOVERNMENT

(Promulgated on July 3rd, 1921).

*Translated and published by the Commission on Extraterritoriality, Peking.*

## CHAPTER I.—GENERAL PRINCIPLES.

*Article 1.*—A Municipality shall comprise an area which constitutes a city or a town. If the number of inhabitants in a Municipality is less than ten thousand, Regulations Governing Rural District Self-government may apply.

*Article 2.*—Municipalities are of the following two classes :

- (1) Special Municipalities which shall be designated by an ordinance upon the petition of the Ministry of Interior when the latter considers it necessary.
- (2) Ordinary Municipalities which consist in all Municipalities other than those designated as Special Municipalities.

*Article 3.*—If the boundary line of a Municipality be not clear and definite, the area of such Municipality shall be determined by the office exercising direct supervision over such Municipality.

When a change in the boundary of a Municipality becomes necessary or when a dispute relating to such a question arises, the Municipal Self-government Assembly shall petition the office exercising direct supervision over such Municipality to settle the case.

If the parties concerned are not satisfied with such settlement of the case, they may appeal in accordance with law or bring the case to the Provincial Council for readjustment.

*Article 4.*—A Municipality is a juristic person. It shall carry out all matters of self-government in accordance with laws and ordinance and under the supervision of the office exercising direct supervision over it.

*Article 5.*—A Municipality may make and enforce by-laws for all matters concerning the rights and duties of its residents and matters of self-government ; provided that such by-laws shall not conflict with the provisions of these Regulations and other laws and ordinances.

*Article 6.*—For the purpose of enforcing its by-laws or administering and disposing of its property, buildings and other public establishments, a Municipality may make municipal regulations.

*Article 7.*—The by-laws and municipal regulations shall be promulgated by public notice of a prescribed form.

*Article 8.*—All persons living in a Municipality shall be residents of such Municipality, and shall enjoy all the rights and fulfil all the duties provided for by these Regulations and the by-laws of such Municipality.

*Article 9.*—All male residents of Chinese nationality, of the age of twenty years or more, having resided continually in the



Municipality for one year and possessing one of the following qualifications shall be entitled to vote in an election of Members of the Municipal Self-government Assembly :

- (1) Paying direct taxes to the amount of one dollar or more each year.
- (2) Possessing movable or immovable property to the value of three hundred dollars or more.
- (3) Having held or holding any public office or having been or being engaged as a school teacher.
- (4) Having graduated from an elementary school or possessing a similar educational qualification.

*Article 10.*—All male residents of Chinese nationality, of the age of twenty-five years or more, having resided continually in the Municipality for two years and possessing one of the following qualifications shall be eligible as a Member of the Municipal Self-government Assembly or an officer of the Municipal Self-government Board :

- (1) Paying direct taxes to the amount of two dollars or more each year.
- (2) Possessing movable or immovable property to the value of five hundred dollars or more.
- (3) Having held or holding any public office or having been or being engaged as a school teacher.
- (4) Having graduated from a school higher than a higher elementary school or possessing a similar educational qualification.

*Article 11.*—None of the following municipal residents shall vote or be eligible :

- (1) A person who has been deprived of civil rights ; provided that such rights have not been restored.
- (2) A person against whom an interdiction or quasi-interdiction has been declared or who has been declared bankrupt ; provided that the interdiction or bankruptcy has not been cancelled or discharged.
- (3) An illiterate.
- (4) A monk or Taoist priest or any other religious priest.
- (5) A soldier in active service.

*Article 12.*—None of the following municipal residents shall be eligible :

- (1) A person holding public office in the District.
- (2) A police, judicial or tax official.

*Article 13.*—Any person having been elected a Member of the Municipal Self-government Assembly or an officer of a Municipal Self-government Board shall not be allowed to refuse to accept the election or to resign except for one of the following causes :

- (1) On account of illness, he will not be able to discharge duties regularly .
- (2) On account of other occupation, he will not be able to reside in the district continually.
- (3) He is of the age of sixty years or more and physically and mentally infirm.

- (4) He has served for three or more consecutive terms.
- (5) For any other reason, approval is given by the District Assembly.

*Article 14.*—A person who refused to accept the election or resigned except for one of the causes referred to in the last preceding Article shall, by a resolution passed in the Municipal Self-government Assembly, be rendered ineligible and deprived of the right to vote for a period of from one to two years.

#### CHAPTER II.—MUNICIPAL SELF-GOVERNMENT ASSEMBLY.

*Article 15.*—Each Municipality shall have a Municipal Self-government Assembly. A Municipal Self-government Assembly in a Municipality of less than fifty thousand inhabitants shall have ten Members; provided that where the number of inhabitants exceeds the fifty thousand limit, the number of Members shall be increased by one for every additional ten thousand inhabitants until the number reaches a maximum limit of thirty for a special Municipality or twenty for an ordinary Municipality.

*Article 16.*—The post of the Members of the Municipal Self-government Assembly shall be honorary and the Members shall be elected by the residents of the Municipality. The regulations governing the election of Members shall be made by ordinance. No father and son or two brothers shall be allowed to be Members of the Assembly at the same time. Should the father, a son or a brother of a person be serving as an officer of the Municipal Self-government Board, such person shall not be eligible for a seat in the Municipal Self-government Assembly.

In case a father and a son or two brothers are elected, the son shall resign in favour of the father and the younger brother shall resign in favour of the elder brother.

*Article 17.*—The term of office of the Members of the Municipal Self-government Assembly shall be two years. One half of the Members shall retire every year in rotation, when an election shall be held to fill the vacancies. If all the Members of the Assembly are elected at the same time, the term of office of one half of them shall be one year.

The Members to retire after the first year shall be determined by lot.

*Article 18.*—A Municipal Self-government Assembly shall have a Chairman elected by the Members from among themselves by open ballot.

The regulations governing the election of the Chairman shall be embodied in the municipal by-laws.

*Article 19.*—When the Chairman is for any reason unable to perform his duties, the Members shall elect a temporary Chairman to act for him.

*Article 20.*—After the expiration of a term of office, the Chairman and Members of the Assembly may be re-elected.

*Article 21.*—When one-third of the seats in the Assembly becomes vacant, a by-election shall be held. The Members thus elected shall serve for the remaining period of the terms of their predecessors.

**Article 22.**—In the event of the office of the Chairman becoming vacant, a new one shall be elected. The provisions of the last preceding Article shall apply to the term of office of the Chairman thus elected.

**Article 23.**—The Chairman of the Municipal Self-government Assembly may employ two or three clerks to take charge of documents and the financial and other miscellaneous matters of the Assembly. The amount of salary for such officers shall be fixed by the Assembly.

**Article 24.**—The sessions of a Municipal Self-government Assembly are ordinary sessions and extraordinary sessions. There shall be two ordinary sessions each year, to be held in the months of April and October respectively. Such sessions shall be summoned by the Mayor of the Municipality. An extraordinary session may be summoned at any time by the Mayor when the Mayor considers it necessary or when request for such session is made by more than half of the Members. But when the case to be considered concerns the Mayor himself, the session shall be called by the Chairman of the Assembly.

Regulations governing meetings of a Municipal Self-government Assembly shall be made by the Assembly.

**Article 25.**—A Municipal Self-government Assembly shall have the following powers :

- (1) To pass municipal by-laws.
- (2) To decide upon questions of reforms, abolition of abuses, and other matters of adjustment of the Municipality.
- (3) To decide upon the matters of self-government to be carried out with the municipal funds.
- (4) To pass upon the budget and accounts of the Municipality.
- (5) To levy municipal taxes and fees.
- (6) To raise municipal loans and to decide upon other contracts imposing a financial burden.
- (7) To decide upon the question of the purchase and disposal of the immovable property of the Municipality.
- (8) To decide upon the question of the management and disposal of the property, buildings and other public establishments of the Municipality.
- (9) To decide upon the matters of the security deposit of the officers of the Municipal Self-government Board.
- (10) To answer the inquiries of the Municipal Self-government Board and the supervising offices.
- (11) To decide upon other matters which, according to laws and ordinances, fall within the power of the Municipal Self-government Assembly.

Resolutions passed by the Municipal Self-government Assembly relating to the above matters shall be submitted to the Mayor for enforcement.

**Article 26.**—A Municipal Self-government Assembly may, by a resolution, entrust the Municipal Self-government Board with the matters referred to in Article 25, subdivision 3 and subdivisions 7 to 9.



*Article 27.*—A Municipal Self-government Assembly may lay its views before the supervising office on any question of local administration which concerns the matters of municipal self-government.

*Article 28.*—During the sittings of the Municipal Self-government Assembly, the Mayor, the Aldermen and Honorary Aldermen may appear and express their views ; provided that they shall have no vote.

*Article 29.*—When a Municipal Self-government Assembly considers that the Municipal Self-government Board has overstepped the limit of its power or acted in contravention of law or against public interests in making any regulations or carrying out any matter, it may, after a resolution is passed, petition the supervising official to stop the execution of such regulations or matter.

Should the Board be not satisfied with a decision given by the official above referred to, it may appeal or submit the case to the Provincial Council for readjustment.

### CHAPTER III.—THE MUNICIPAL COUNCIL.

*Article 30.*—A special Municipality shall have a Municipal Council consisting of the following persons :

- (1) The Mayor.
- (2) Assistants.
- (3) Aldermen.
- (4) The Honorary Councillors.

*Article 31.*—There shall be four Honorary Councillors for each Municipal Council ; provided that the number may, by the by-laws of the Municipality, be increased to eight.

The Honorary Councillors shall be elected by the Municipal Self-government Assembly from among the residents of the Municipality possessing the qualifications to vote. In the matters of the election and by-elections of such Honorary Councillors and their terms of office, the regulations governing the elections and term of office of the Members of the Municipal Self-government Assembly shall apply.

*Article 32.*—The Mayor shall be the Chairman of the Municipal Council, and may call a meeting at any time. The regulations governing its meetings shall be made by the Council.

*Article 33.*—The Municipal Council shall have the following power :

- (1) To decide upon the bills to be introduced into the Municipal Self-government Assembly.
- (2) To decide upon the matters entrusted by the Municipal Self-government Assembly.
- (3) To make by-laws of the Municipality.
- (4) To decide upon other matters which, according to laws and ordinances, fall within the power of the Council.

In an ordinary Municipality where there is no Municipal Council, the Mayor shall decide upon the matters above referred to.

*Article 34.*—At the meeting of the Municipal Council, the Chairman and the Members of the Municipal Self-government

Assembly may appear and present their opinions ; provided that they shall have no vote.

*Article 35.*—The provisions of Articles 23 and 27 shall apply to the Municipal Council.

#### CHAPTER IV.—MUNICIPAL OFFICES.

*Article 36.*—Every Municipality shall have a Municipal Self-government Board. In such Board, there shall be a Mayor who shall be the representative of the Municipality and exercise supervision over the officers under him.

The Mayor shall be elected by the Municipal Self-government Assembly from among the municipal residents possessing the qualifications required for a seat in the Municipal Self-government Assembly. In an ordinary Municipality, the name of the Mayor, after he has been elected, shall be submitted to the official exercising direct supervision. But the Mayor of the Municipality of Peking shall be selected by the Ministry of Interior, and be appointed by the President upon the petition of the Premier. The name of the Mayor of any other Municipality shall, after he has been elected, be submitted to the official exercising direct supervision, and, upon the request of such official, be appointed by the Ministry of Interior.

*Article 37.*—A Mayor shall have the following duties and functions :

- (1) To execute the resolutions passed by the Municipal Self-government Assembly.
- (2) To carry out the matters of the election of the Members of the Municipal Self-government Assembly.
- (3) To introduce bills into the Municipal Self-government Assembly ; provided that, in a special Municipality, such bills shall be adopted by the Municipal Council first.
- (4) To manage and supervise the property, buildings and other public establishments of the Municipality.
- (5) To take charge of the receipts and expenditures of the Municipality.
- (6) To collect all kinds of municipal self-government taxes and fees in accordance with laws and ordinances and resolutions passed by the Municipal Self-government Assembly.

*Article 38.*—When the Mayor considers that a resolution passed by the Municipal Self-government Assembly is beyond its power, in conflict with laws or ordinances, or detrimental to the public interests, he may, within five days after its passage, send such resolution to the Assembly for reconsideration. Should the Assembly adhere to its original decision, the Mayor may petition the official exercising direct supervision for cancellation.

Should the decision thus obtained be considered unsatisfactory, an appeal may be made in accordance with law, or a statement may be made to the Provincial Council for settlement.

*Article 39.*—There shall be Assistants in a special Municipality and Aldermen in an ordinary Municipality. Such Assistants or Aldermen shall assist the Mayor in the performance of the executive functions. The number of such officers shall be determined with

relation to the amount of the affairs of the Municipality ; provided that the number shall in no case exceed four.

An Assistant shall be selected and appointed by the Mayor from among the residents of the Municipality with adequate knowledge ; provided that such appointment shall be approved by the Municipal Self-government Assembly.

An Alderman shall be elected by the Municipal Self-government Assembly from among the residents of the Municipality possessing the qualifications to be elected.

*Article 40.*—A Municipal Self-government Board shall have a treasurer appointed by the Mayor ; provided that such appointment shall be approved by the Municipal Self-government Assembly.

A treasurer shall deposit a security fund.

*Article 41.*—A special Municipality may be divided into wards, for each one of which an Alderman shall be appointed to carry out the self-government matters of the ward under the direction of the Mayor.

The Alderman of a ward shall be elected by the Municipal Self-government Assembly from among the residents of the Municipality possessing the qualifications to be elected.

In the matter of the election provided for by the last preceding Article and Article 39, the provisions relating to the election of the Members of a Municipal Self-government Assembly shall apply.

*Article 42.*—When it is necessary for carrying out the matters of the Municipality to have subordinate officers, such officers may be appointed by the Mayor from among persons having adequate knowledge. Such appointment shall not be limited to the residents of the Municipality. The detailed regulations relating to the performance of their functions shall be made by municipal by-laws.

*Article 43.*—The term of office of a Mayor and the officers of the Municipal Self-government Board shall be three years. After the expiration of their term, the same officers may stand for re-election.

*Article 44.*—An officer of the Municipal Self-government Board shall not be allowed to function concurrently as a Member of the Municipal Self-government Assembly. If a Member of the Municipal Self-government Assembly be elected an officer of the Municipal Self-government Board, he shall resign his membership of the Assembly.

A father and a son or two brothers shall not be allowed to be officers of the Municipal Self-government Board at the same time.

*Article 45.*—In case the Mayor is for any cause unable to perform his duties, the eldest of the Assistants or Aldermen shall act for him. In the case of equal age, the choice shall be made by lot.

*Article 46.*—Should the Mayor and other officers of the Municipal Self-government Board for any cause vacate their office, successors shall be elected.

The provisions of Article 21 shall apply to the term of office of the persons thus filling the vacancies.

*Article 47.*—The Mayor and other officers of the Municipal Self-government Board shall all be salaried officers. The amount of their



salaries shall be fixed by municipal by-laws; provided that the amount of the salary of the Mayor of the Peking Municipality shall be fixed by ordinance.

*Article 48.*—A Mayor may employ clerks to take charge of documents and financial and other miscellaneous affairs. The amount of their salaries shall be fixed by the Mayor.

The clerks of the Municipal Council in a special Municipality and the clerks of the Municipal Self-government Assembly in an ordinary Municipality may function concurrently as the clerks referred to in the preceding paragraph.

#### CHAPTER V.—RECEIPTS AND EXPENDITURES.

*Article 49.*—Funds for the self-government matters of a Municipality shall be derived from the following sources:

- (1) Receipts from the property belonging to the Municipality.
- (2) Municipal self-government taxes.
- (3) Receipts from public enterprises carried on by the Municipality.
- (4) Charges, rents and fees.
- (5) Fines.

*Article 50.*—If a Municipality has land, forests or any other immovable property granted by the Government, it shall keep them permanently as its fundamental property. Receipts from such property shall be used to defray the expenses of self-government matters.

*Article 51.*—The Government may grant subsidies to a Municipality for the purpose of relief or the carrying out of public enterprises.

*Article 52.*—If any municipal tax be included in the list of taxes to be collected by the Government, the rate of such tax and the method of its collection shall be prescribed by law.

*Article 53.*—A charge or rent may be levied for the use of any building or any public establishment belonging to the Municipality.

*Article 54.*—A fee may be charged for the execution of any matter by the Municipality at the request of an individual.

The collection of the fees and rents shall be prescribed by municipal regulations. Fines of not more than ten dollars may be provided for therein.

*Article 55.*—For the purpose of starting any affair necessary for the public, a Municipality may, with the permission of the supervising official, raise a municipal loan; provided that only citizens of the Chinese Republic shall be allowed to be holders of such bonds.

The rate of interest and the manner of raising and redeeming such municipal loans shall be approved by the Ministry of Interior and the Ministry of Finance.

*Article 56.*—If property is donated to the Municipality by a private individual for a specified purpose, it shall not be applied to any other use; provided that this provision shall not apply when the use to which such property had been devoted has been changed or cancelled by law or ordinance and such change or cancellation has been approved by the Municipal Self-government Assembly and,

upon the petition of the official exercising direct supervision, permitted by the chief official.

*Article 57.*—Before the opening of every fiscal year, the Municipal Self-government Board shall prepare a budget setting forth the estimated receipts and expenditures of the year, and submit it to the Municipal Self-government Assembly before the opening of its ordinary session in April.

When the budget is submitted, a report of the matter to be carried out and a financial statement shall also be submitted.

*Article 58.*—If any matter which is to be carried out with the funds of the Municipality cannot be finished in one year, or the funds for this purpose cannot be raised in one year, continuing expenditure funds may, with the approval of the Municipal Self-government Assembly, be provided for a previously fixed number of years.

*Article 59.*—A reserve expenditure fund may be provided in the budget to meet any deficit or any other expenditure not provided for in the budget ; provided that such fund shall not be used for any matter which has been voted against by the Municipal Self-government Assembly.

*Article 60.*—When the Municipal Self-government Board makes during the session of the same year any addition or amendment in the budget already passed, the Municipal Self-government Assembly shall be requested to approve.

*Article 61.*—A Municipality may provide for special accounts for public enterprises.

*Article 62.*—When a budget has been adopted by the Municipal Self-government Assembly, the Municipal Self-government Board shall make a report to the supervising official and promulgate such budget.

*Article 63.*—After the close of a fiscal year, the Municipal Self-government Board shall make a final account embodying therein all ordinary accounts and special accounts and submit such final accounts together with vouchers and receipts to the Municipal Self-government Assembly at the opening of its ordinary session in October.

After such final accounts have been approved by the Municipal Self-government Assembly, they shall be reported to the supervising official and published.

*Article 64.*—If any order for payment issued by the Mayor be not in conformity with the by-laws or budget of the Municipality, the treasurer shall refuse to pay.

#### CHAPTER VI.—UNIONS OF MUNICIPALITIES AND RURAL DISTRICTS.

*Article 65.*—When there are matters which concern the interests of Municipalities and the Rural Districts and which must be carried out by them jointly, a Union of the Municipalities and Rural Districts may be established ; provided that the Municipalities and the Rural Districts all agree and approval is obtained from the official exercising direct supervision upon petition.

Such Union of Municipalities and Rural Districts is a juristic person.

*Article 66.*—When a Union of Municipalities and Rural Districts desires to increase or reduce the number of the component

Municipalities and Rural Districts, or to alter the kind of affairs to be carried out jointly, it shall be effected in accordance with the agreement among the Municipalities and Rural Districts if permission is given by the official exercising direct supervision upon petition. These provisions shall apply to matters relating to the disposal of property.

*Article 67.*—When a Union of Municipalities and Rural Districts is established, by-laws of the Union shall be made in accordance with the agreement among the Municipalities and Rural Districts. The official exercising direct supervision shall be petitioned for approval of their execution. These provisions shall apply to alterations of the by-laws.

*Article 68.*—The by-laws of the Union shall contain the following particulars :

- (1) The name of the Unions.
- (2) The Municipalities and Rural Districts composing the Union.
- (3) The common affairs of the Union .
- (4) The address of the Union Board.
- (5) The organization of the Union Assembly and the election of its Members.
- (6) The organization, election and appointment of the Union officers.
- (7) The distribution of the burden of the Union expenses.

*Article 69.*—The dissolution of the Union shall be effected in accordance with the agreement among the Municipalities and Rural Districts if permission is given by the official exercising direct supervision upon petition. These provisions shall apply to matters relating to the disposal of property.

*Article 70.*—The provisions relating to the Municipalities shall apply to the Unions of Municipalities and Rural Districts unless the Articles of this Chapter otherwise provide.

#### CHAPTER VII.—SUPERVISING OFFICERS.

*Article 71.*—The District Magistrate shall be the official exercising direct supervision over the Municipality. The higher supervising officials shall be determined in accordance with the existing official system. But the Municipality of Peking shall be under the supervision of the Ministry of Interior ; all other special Municipalities shall be supervised by the highest local executive.

*Article 72.*—The official exercising direct supervision may, when necessary for the purpose of supervision, issue orders and take measures.

If such orders or measures be considered unsatisfactory, an appeal may be made in accordance with law, or a statement of the case may be made to the Provincial Council for settlement.

*Article 73.*—If the official exercising direct supervision can prove that the Municipal Self-government Assembly has acted in contravention of law or beyond its power, he may petition the higher supervising official to dissolve the Assembly ; provided that the Assembly shall not be dissolved more than once during the tenure of office of the official exercising direct supervision ; and



provided that such official shall order the Mayor to hold a new election of the Assembly and to summon it within three months after the dissolution.

*Article 74.*—The official exercising direct supervision may, when necessary for the purpose of supervision, order the Mayor to submit a report of any matter and demand, for examination, correspondence, books or any other documents; or he may make a personal inspection of the accounts.

At the end of every year, the official exercising direct supervision shall send to the superior official a report of the conditions of the affairs of the Municipalities within his jurisdiction; such report shall be submitted through such superior official to the Ministry of Interior for record. But, in the Municipality of Peking, such report shall be submitted directly by the Ministry of Interior to the President.

*Article 75.*—If an item of expenditure which, according to law or ordinance, shall be borne by the Municipality is not entered in the budget, the official exercising direct supervision may enter such item, stating the reasons.

*Article 76.*—The regulations relating to the officers of municipal self-government shall be made by ordinance.

#### CHAPTER VIII.—SUPPLEMENTARY PROVISIONS.

*Article 77.*—The detailed regulations relating to the enforcement of these Regulations shall be made by ordinance.

*Article 78.*—The date for the coming into force of these Regulations and the area within which they shall be operative shall be determined by the President upon petition of the Minister of Interior through the Premier.

## THE MARTIAL LAW

(Promulgated on December 15th, 1912).

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—In case of war or any other extraordinary event where military guarding is necessary for the whole country or any part of it, the President may declare Martial Law or cause it to be declared in accordance with this Law.

**Article 2.**—Areas under Martial Law are of two kinds :

- (1) Guarded areas.
- (2) War areas.

**Article 3.**—Guarded areas are areas which, in case of war or any other extraordinary event, should be guarded.

War areas are areas which should be defended or attacked on account of an attack or siege by an enemy.

The areas referred to in the preceding two paragraphs shall be delimited and declared when circumstances require.

**Article 4.**—When, during the time of war, an important fort, naval port, naval dockyard, or any other area of defence is besieged or attacked, the commanding officer of the area may declare Martial Law.

The foregoing provisions shall apply when a commanding officer in active service is required by military considerations to take such measures at any moment.

**Article 5.**—When, owing to some extraordinary event, it is necessary to declare Martial Law, the commanding officer of the area shall petition the President to declare it. In case of emergency and when communications are interrupted so that such petition is impossible, the commanding officer of such area may declare Martial Law.

**Article 6.**—A commanding officer who may declare Martial Law under the provisions of Articles 4 and 5 shall be an Army Commander, Commander of a Division, Commander of a Brigade, commanding officer of an important fort, commanding officer of constabulary, commander of a fleet, chief commanding officer or any commanding officer of a squadron, chief defence officer of a naval port or any commanding officer under special orders.

**Article 7.**—When Martial Law is declared by a commanding officer under Articles 4 or 5, the circumstances of the declaration and the cause shall forthwith be reported to his superior and the President.

**Article 8.**—An area under Martial Law may, when circumstances require, be altered.

The provisions of Articles 4 to 7 shall apply to alterations of areas under Martial Law.

**Article 9.**—Jurisdiction over such local administrative and judicial matters in a guarded area as are concerned with military affairs shall be transferred to the commanding officer of the area.

The local administrative and judicial officials under such circumstances shall be under the direction of the commanding officer of the area.

*Article 10.*—Jurisdiction over the local administrative and judicial matters in a war area shall be transferred to the commanding officer of the area.

The provisions of the second paragraph of the last preceding Article shall apply to war areas.

*Article 11.*—Any such civil or criminal case in the war area as is concerned with military affairs shall be adjudicated by the military court.

*Article 12.*—In a war area where there is no court or where communications with a court having jurisdiction are interrupted, any civil or criminal case, whether concerned with military affairs or not, shall be adjudicated by the military court.

*Article 13.*—No appeal shall be made from an adjudication under Article 11.

*Article 14.*—The commanding officer of an area under Martial Law, shall have power to execute the following matters, and no compensation shall be claimed for any loss or damage arising therefrom :

- (1) To prohibit any meeting or to suspend any association, newspaper, picture or advertisement which is considered to be harmful to the situation.
- (2) To prohibit the exportation of any article belonging to any person if such article can serve any military needs or if circumstances require such prohibition.
- (3) To search for private-owned guns, cannons, cartridges, powder, arms, any apparatus for producing fire, and any other dangerous articles, and, when circumstances require, to take custody of or confiscate such articles.
- (4) To censor mails and telegrams.
- (5) To inspect incoming and outgoing ships and any other vehicle, or stop land and water communications.
- (6) When it is necessary on account of war emergency, to break, destroy and burn the movables and immovables of any person.
- (7) In a war area, to enter a dwelling house or any other building or ship to make search whether by day or by night.
- (8) When circumstances require, to order any person living in the war area to leave such area.

A person who suffers loss or damage by reason of any matter arising under subdivision (6) of the preceding paragraph shall be compensated.

*Article 15.*—When the cause of the declaration of Martial Law ceases to operate, withdrawal of Martial Law shall forthwith be declared.

*Article 16.*—A declaration of Martial Law shall, upon the declaration of the withdrawal of Martial Law, cease to be operative.

*Article 17.*—The provisions of this Law shall come into force on the day of promulgation.



## REGULATIONS GOVERNING MILITARY COURTS- MARTIAL.\*

Promulgated by Presidential Mandate on March 26th, 1915;  
Revised on April 17th, 1913 and August 18th, 1921.

### CHAPTER I.—GENERAL PROVISIONS.

*Article 1.*—A military service man who violates Regulations Governing Military Criminal Cases, or (commits) the offences set forth in the Provisional Criminal Code, or the Police Regulations or any other Law providing punishment for its violation; or a non-military service man who violates the provisions of Article 2 of the Regulations Governing Military Criminal Cases, shall be tried by a military Court-Martial. Complaint for redress by a Military Officer or a military service man shall also be brought before a military Court-Martial. But a military Court-Martial shall only be organized by order and approval of the Ministry of War or the Highest Authority concerned.

*Article 2.*—The presence of visitors shall not be allowed in a military Court-Martial, except when a pronouncement of a judgement is to be made.

*Article 3.*—Military service men referred to in these Regulations are those who are expressly designated in Article 6 and Article 7 of the Regulations Governing Military Criminal Cases. Retired soldiers and persons on reserve for military service shall not be treated as service men unless actually called for service.

*Article 4.*—Military officers referred to in these Regulations are Commander of an Army Corps, Commander of a Division, Commander of a Brigade or a Mixed Brigade, Commander of a Provincial Army, Commanders in a battle field and the Highest Military Officers of Specially Organized Army.

*Article 5.*—When a military service man commits any offence of the Provisional Criminal Code or violates any Police Regulation or any other Law, prosecution may be instituted by military officers who are vested with the power of procuration; but this does not apply to a case where complaint should be made by the party injured.

### CHAPTER II.—ORGANIZATION OF MILITARY COURTS-MARTIAL.

*Article 6.*—The various Courts-Martial are as follows:—

*High Military Court-Martial.* To be established in the Ministry of War.

*Military Court-Martial.* To be established either in the Offices of Provisional Military Governor, or in the Headquarters of the Military Governor of a Frontier Area or Garrison Military Governor: or in the Headquarters of the Highest Officers of an Army Corps, Division, Brigade, or Provincial Army.

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\*China Year Book, 1926.

*Provisional Military Court-Martial.* To be established in the Army or Headquarters of Detached Military Forces.

*Article 7.*—A Military Court-Martial comprises a Chief Judge, Associate Judges, Assistant Judges and Writers.

*Article 8.*—Each of the Military Courts-Martial shall have one Chief Judge and four Associate Judges who are chosen or appointed in such manner as mentioned hereafter in this Article according to the official position of an accused. The Chief Judge and Associate Judges of the Provisional Army may be chosen or appointed without regard to the Official position of the accused; this applies also to a Provisional Military Court-Martial but with one or two Associate Judges less, and in such case there may be one Associate Judge especially appointed to try the case so as to simplify the procedure of the trial.

CHIEF JUDGE.	ASSOCIATE JUDGES.	ACCUSED.
One officer having either the rank of a Colonel Lt. Colonel or Major.	Four officers having either the rank of a Captain, 1st or 2nd Lieutenant.	Non-Commissioned officers of the 1st, 2nd, and 3rd classes.
One officer having either the rank of a Colonel, Lt. Colonel or Major.	Two Captains or 1st Lieutenants and 2nd Lieutenants.	2nd Lieutenants and officers of equal rank.
One officer having either the rank of a Colonel, Lt. Colonel or Major.	Two Captains and one 1st Lieutenant.	1st Lieutenants and officers of equal rank.
One Colonel or Lt. Colonel.	Two Majors and 2 Captains.	Captains and officers of equal rank.
One Colonel.	Two Lt. Colonels and 2 Majors.	Majors and officers of equal rank.
One Brigadier General.	Two Colonels and 2 Lt. Colonels.	Lt. Colonels and officers of equal rank.
One Lt. General.	Two Brigadier Generals and 2 Colonels.	Colonels and officers of equal rank.
One General.	Two Lieutenant Generals and 2 Brigadier Generals.	Brigadier Generals and officers of equal rank.
One General.	One General and 3 Lt. Generals.	Lt. Generals and officers of equal rank.
One General.	Two Generals and 2 Lt. Generals.	Generals.

### CHAPTER III.—POWERS OF COURT-MARTIAL.

*Article 9.*—A Military Court-Martial shall have power to try any officer of the rank of a Colonel or of a lower rank than a colonel, or their equivalents, who is accused of a crime.

*Article 10.*—A High Military Court-Martial shall have power to try a General or officer of equal rank or a military service man under direct control, who is accused of a crime.

*Article 11.*—A new trial shall be held in a High Military Court-Martial, but this does not apply in the case of a new trial when the original judgment was made in the absence of the accused.

*Article 12.*—A High Military Court-Martial may, on account of distance or any other inconvenience, order its Chief Judge, Associate Judges and Assistant Judges to go to a place where a crime has been committed and hold trial there.

An officer other than one who is not under the jurisdiction of a High Military Court-Martial or a Military Court-Martial may be selected and appointed by the Ministry of War upon the application of the superior authority in control to be the Chief Judge, Associate Judge or an Assistant Judge. But the Minister of War may for the sake of convenience send an accused to a Military Court-Martial of any other district to undergo a trial.

*Article 13.*—A Provisional Military Court-Martial shall have power to try any officer of the rank of a Colonel or of a lower rank than Colonel or their equivalents, who is accused of a crime committed in the district under military control.

*Article 14.* A war prisoner or a surrendered enemy who is accused of a crime shall be tried by a Military Court-Martial.

*Article 15.*—Where two or more military service men are jointly accused of a crime or of being accomplices to a crime and do not belong to the same jurisdiction, the Military Court-Martial before which the case was first brought for trial shall exercise jurisdiction in the case; but if one of the joint-offenders or accomplices should be tried in a High Military Court-Martial, the case shall be tried by a High Military Court-Martial. The same rule applies to a case where a naval man is one of the joint-offenders or accomplices.

*Article 16.*—When a Military service man had committed a crime before he joined the service but the crime became known during his term of service he shall be tried by a Military Court-Martial, but if he had committed a crime during his term of service but the crime was detected after he has left the service, an ordinary law court shall have jurisdiction over the case, except in a case where the offender is to be discharged and deprived of his military rank on account of the commission of the crime.

#### CHAPTER IV.—MILITARY PROCURATORATE.

*Article 17.*—When a military service man is accused of an offence under the Provisional Criminal Code or a violation of the Police Regulations or the provisions of any other law, a military officer who is vested with the power of procuration shall have the power to search for evidence.

*Article 18.*—A superior authority of the different ranks in charge who suspects that a subordinate has committed an offence may investigate, or request a Military Procurator to make examination or investigation.

*Article 19.*—The following officers may be appointed as Military Procurators: 1. Superior officers and non-commissioned officers of the Military Police. 2. Military Aides-de-camp of an Army Corps, Division or Brigade.

The Military Procurators of the Provincial Army shall be chosen and appointed by the Highest Authorities concerned.

*Article 20.*—Prosecution may be brought by any person against a military service man before a Military Procurator of the place where the crime was committed or before the procurator of the district, where the offender belongs, or before the high authority in charge. The same rule applies when an injured party sues for



damage resulting from the crime committed by such military service man.

*Article 21.*—A Military Procurator, gendarme, judicial police officer, or policemen may arrest a military service man who commits a crime.

The offender must, after the offender's arrest by a gendarme, judicial police officer or policemen, be forthwith delivered to a Military Procurator or the high authority of the proper rank in charge.

*Article 22.*—A Procurator, or judicial police officer shall, after the case has been accepted, deliver a military service man against whom a prosecution or complaint has been made to a Military Procurator or the superior officer in charge.

*Article 23.*—The Military Procurator and the superior officer of the proper rank in charge may, in accordance with the provisions of Article 21, take the same action against an ordinary person who is a joint-offender with an accused military service man.

*Article 24.*—The Military Procurator and the superior officer of the proper rank in charge after taking steps to procure evidence against an offender in a case shall submit evidence whether in the form of a chattel or of documents together with a report of investigation to the various authorities in accordance with the following procedure :—

- (1) Petition to the High Authority, if a commission of an offence mentioned in the Provisional Criminal Code has been recognized.
- (2) Send to the superior officer of an offender, if a violation of the Police Regulations has been recognized.
- (3) If the jurisdiction is recognized as disputable and the offender be a military service man, he shall be sent to the Military Procurator who has direct control over such offender ; if the offender be a naval man, to the Naval Procurator who has direct control over such offender, and if the offender be an ordinary person, then the Procuratorate of the District. But a petition shall be submitted to a High Authority for instruction for the disposal of an ordinary person who is a joint-offender with a military service man.
- (4) Petition to the Ministry of War, if the case is one which belongs to the jurisdiction of the High Military Court-Martial.

#### CHAPTER V.—TRIAL.

*Article 25.*—The Ministry of War and all other High Authorities shall send a case, after acceptance, to an Assistant Judge for trial.

*Article 26.*—Before a trial takes place, the Assistant Judge shall issue a writ of summons, and, if necessary, a warrant, but a report must be submitted to the High Authority in control for information.

An accused who appears in court by a writ of summons shall be tried within 24 hours, and one who appears in court by warrant within 48 hours.

If, after the time limit for the trial of an accused referred to in the preceding paragraph has been reached, it should be found necessary to detain such accused, a writ of detention shall be issued. An accused, who is not able to appear in court on account of illness or any other justifiable and important cause, whether summoned by a writ of summons or by a warrant, may be examined by a Military Procurator in the place where he resides. But if the accused is in a distant place, the Military Procurator, Procurator, or judicial police officer of such place may be requested by letter, in which the subject matter of the enquiry shall be specified, to hold a trial, transmit a writ of summons, or execute a warrant. All other matters which should be transmitted by petition or letter to another place for execution by a High Authority who has direct control over the accused shall be done in accordance with the provisions of regulations.

*Article 27.*—When an accused has escaped to evade a writ of summons or a warrant, the authorities, Procuratorate, and Police Office of the place where such accused takes hiding may be requested to make apprehension of such accused person. Any other matter which should be transmitted by petition to another place for execution or for the arrest of a person shall be done in accordance with the provisions of the regulations.

Orders shall be secretly issued for the arrest of important criminals in accordance with the provisions of the preceding paragraph.

*Article 28.*—An Assistant Judge who during the trial of an accused has discovered other joint-offenders, accomplices, or any crime other than that for which such accused was arraigned may directly conduct a trial: but if the case belongs to the jurisdiction of a High Military Court-Martial, a report shall be sent to the High Authority who has direct control over the accused, or to the Commander-in-chief of the Army for transmission to the Ministry of War.

*Article 29.*—After the trial of an ordinary person who is involved in a joint-offence with a military service man has been concluded, such ordinary person together with his confession and the evidence produced, whether in the form of chattels or documents, shall be sent to the Procuratorate which has jurisdiction over the accused or to any other office which has power of procuration.

*Article 30.*—The Assistant Judge shall, after the trial of case, submit his written opinion and all legal documents relevant to the case, to the Ministry of War. Commander-in-chief of the Army, or the High Authority in Control for instruction; and if the Ministry of War, Commander-in-chief of the Army, or the High Authority in Control deems it necessary to send the case to a Military Court-Martial, an order for the organization of a Military Court-Martial shall be issued.

Should the Assistant Judge after the trial of a case consider that the jurisdiction of the case is disputable or that the case should be dismissed, he shall submit his written opinion together with all other legal documents relevant to the case to the Ministry

of War, Commander-in-chief of the Army, or the High Authority in Control for an announcement to that effect.

#### CHAPTER VI.—JUDGMENT.

*Article 31.*—A Military Court-Martial shall be composed of a Chief Judge, several Associate Judges and Assistant Judges, and the Writers: but the Chief Judge shall have power to conduct a trial by himself or may instruct the Associate Judges or Assistant Judges to do so.

*Article 32.*—After a case is listed for trial and before its conclusion, the Chief Judge may issue a writ of summons, warrant or a writ of detention as he deems necessary.

*Article 33.*—The Chief Judge may take any precautions whatever against accidents in Court.

*Article 34.*—Whenever an accused who should be given a term of imprisonment or a more serious punishment has escaped and is therefore unable to appear in open court, or whenever one who should be fined a sum of money refuses to appear in open court, a judgment may be rendered during his absence.

*Article 35.*—A judgment may be given against persons who are in court and are concerned in a joint-offence although some of the joint-offenders are not present.

*Article 36.*—The written judgment together with all the legal documents relevant to the case shall be prepared in accordance with the particulars specified in the following paragraphs, and signed and sealed by the Chief Judge, Associate Judges and Assistant Judges and Writers for transmission to the Ministry of War, Commander-in-chief of the Army, or the High Authority in Control.

- (1) Grounds of the judgment.
- (2) Written judgment for Conviction shall clearly specify the evidence by which an accused is convicted and set forth the provisions of law for the violation of which an accused is condemned.
- (3) Written judgment for Acquittal shall clearly specify either that the accused has died, or that an error has been made in the case, or that the case is not actionable, or that the evidence is not sufficient for a conviction.
- (4) Written Judgment for Dismissal shall clearly specify the time of limitation in a prosecution, or amnesty or pardon, or the fact that an accused should entirely be exonerated after definite conviction or by virtue of legal provisions.
- (5) Written Judgment of Disputed Jurisdiction shall clearly specify the fact why jurisdiction is in dispute.
- (6) If there is a private action mentioned in a Judgment, it must be thus clearly specified.
- (7) Official-title, number of the company, name, place of origin, age, address of an accused and the dates of conviction.

*Article 37.*—The High Authority who has direct control over an accused shall submit all the legal documents relevant to the



case setting forth the following items mentioned in the Article together with the written judgment and a written opinion to the Ministry of War, Commander-in-chief of the Army, or the Highest Authority in Control for instruction. A judgment of a High Military Court-Martial shall be pronounced by order of the Ministry of War. But either the Ministry of War or the Commander-in-chief of the Army shall instruct the High Authority in Control to make a pronouncement, if the judgment was referred by a Military Court-Martial :

- (1) Death penalty.
- (2) Imprisonment for Generals and Colonels or officers of equal rank.
- (3) Imprisonment of the Third Degree or up for Captains and Lieutenants, or officers of brevet rank of Captains and Lieutenants or of equal rank.

*Article 38.*—When imprisonment of the Fourth Degree or below is given to Captains and Lieutenants, or officers of brevet rank of Captains and Lieutenants or of equal rank, the High Authority in Control shall after pronouncement of the judgment submit a report to the Ministry of War and the Commander-in-chief of the Army, or petition and submit the cases accumulated to the Highest Authority in Control for transmission to the Ministry and the Commander-in-chief .

*Article 39.*—When imprisonment is given to non-commissioned officers, the High Authority in Control shall after pronouncement of judgment copy the whole case and report to the Ministry of War and the Commander-in-chief of the Army or submit the case to the Highest Authority in Control for transmission to the Ministry for instruction.

*Article 40.*—When a Military Court-Martial is held in a place under Martial Law or bordering a battle-field, the High Authority in Control may pronounce the judgment without observing restrictions as referred to in the provisions of Articles 37, but he must after pronouncement send a complete copy of the case to the Ministry of War and the Commander-in-chief of the Army or the Highest Authority in Control.

*Article 41.*—When a High Authority in Control considers that the judgment of a Military Court-Martial is contrary to the provisions of law, he may order a reconsideration of the finding. In case one has no authority to make pronouncement of a judgment, a petition together with a written opinion shall be submitted to the Ministry of War, or the Highest Authority in Control.

*Article 42.*—If the Ministry of War or the Highest Authority in Control considers that a judgment has been made contrary to the provisions by law, the Ministry of War or the Highest Authority in control may order a reconsideration of the judgment of a High Military Court-Martial or a Military Court-Martial, or of the report submitted by a superior officer for pronouncement.

*Article 43.*—When approval of a judgment has been received it shall be pronounced in the presence of the accused in open court before the Chief Judge, Associate Judges, Assistant Judges and Writers.

**Article 44.**—When an accused subjected to punishment of imprisonment or one of a more serious nature hides himself, or escapes after conviction, a warrant may be issued for his arrest, or a notification sent to all other official organs for his apprehension. But in case a petition, or written request, or order shall have to be made for the arrest of the accused, it shall be done in accordance with the ordinary procedure.

#### CHAPTER VII.—NEW TRIAL.

**Article 45.**—The Ministry of War, Commander-in-chief of the Army, or the Highest Authority in Control may order a new trial, when a judgment of a Military Court-Martial is considered to have been wrongly made and pronounced.

**Article 46.**—After the pronouncement of a judgment has been made, the accused or the relative of a deceased accused may apply for a new trial in case one of the following happens :

- (1) When in a case of homicide either the person alleged to have been killed is still alive after the accused has been sentenced, or such person had actually died before the crime was committed.
- (2) When some person has already been sentenced for the same crime, in which case the accused was not an accomplice.
- (3) When an *alibi* has been proved by producing proper written evidence showing that the accused was not present at the place where the crime was committed.
- (4) When judgment has already been pronounced against a person who has maliciously and falsely prosecuted the accused.
- (5) By producing proper written evidence showing that some of the legal documents relevant to the case has been forged or were in error.

**Article 47.** The Ministry of War, Commander-in-chief of the Army, or the Highest Authority in Control may order a new trial when any of the actual facts referred to in the preceding Article are made known to them.

**Article 48.**—When any of the actual facts referred to in Article 48 are made known, the High Authority in Control shall submit all the legal documents relevant to the case with a written opinion attached to the Ministry of War or the Highest Authority in Control.

**Article 49.**—An application for a new trial may be made by an accused who has been sentenced to imprisonment during his absence in court within the period after the pronouncement of the judgment has been made and before the term of imprisonment expires ; but a new trial must be held within 10 days in a case where an accused definitely knows that the pronouncement of the judgment has been rendered against him, or within 10 days after his arrest or after his surrender in person.

A new trial may be applied for by a person who has been fined a sum of money within 10 days after the written pronouncement to that effect has been sent to his residence.

**Article 50.**—An appeal for a new trial may be applied for either at the time of execution of the punishment or after the execution has been cancelled.

*Article 51.*—When an accused has himself applied for a new trial, the new punishment to be inflicted shall not be severer than the original one.

*Article 52.*—An appeal for a new trial shall be applied for before the Highest Authority which controls a Military Court-Martial; and before the Ministry of War, when the original case was decided by a High Military Court-Martial.

An assistant judge when making an appeal for a new trial must submit his reasons in writing together with the pronouncement of judgment of the original Military Court-Martial and copies of any other written evidence before a High Authority in Control for transmission to the Ministry of War, Commander-in-chief of the Army, or the Highest Authority in Control. An accused or his relative when making an appeal for a new trial must submit his reasons in writing to an Assistant Judge who shall enclose his written opinion and ask the approval of a High Authority in Control before transmitting the case to the Ministry of War and the Highest Authority in Control.

When an appeal for a new trial has been applied for against a judgment rendered in the absence of the accused the High Authority in Control shall forthwith order the holding of a new trial.

*Article 53.*—When receiving an appeal for a new trial and recognizing that a new trial should be granted, or when an appeal for a new trial has been applied for by a High Authority in Control, the Ministry of War and the Highest Authority in Control shall forthwith order the holding of a new trial.

*Article 54.*—A Military Court-Martial, when receiving an application of an appeal for a new trial against a judgment rendered in the absence of the accused, may forthwith order the holding of a new trial without petitioning the Ministry of War, Commander-in-chief of the Army, and the Highest Authority in Control.

*Article 55.*—When an order is given by the Ministry of War, Commander-in-chief of the Army or a Highest Authority in Control for a new trial, if the punishment other than a death sentence is about to be executed, such punishment shall forthwith be stopped: and in the case of a death penalty, the execution thereof shall be withheld when an appeal for a new trial has been applied for.

*Article 56.*—Approval shall be obtained for a new trial; and the judgment in a new trial shall not be executed without approval.

#### SUPPLEMENTARY PROVISIONS.

*Article 57.*—These Regulations shall have effect on the day of promulgation.



## REVISED LAW OF NATIONALITY

Promulgated by Presidential Mandate on December 30th, 1914.

*Translated and published by the Commission on Extraterritoriality, Peking.*

### CHAPTER I.—NATURAL POSSESSION OF CHINESE NATIONALITY.

*Article 1.*—The following persons are of Chinese nationality.

- (1) One whose father is at the time of his (or her) birth a Chinese citizen ;
- (2) One who is born after the death of his (or her) father and whose father is a Chinese citizen at the time of his death;
- (3) One who is born in China, whose mother is a Chinese citizen, and whose father is unknown—or has no nationality ;
- (4) One who is born in China, and whose parents are unknown or have no nationality.

### CHAPTER II.—THE ACQUISITION OF CHINESE NATIONALITY.

*Article 2.*—Aliens who have fulfilled one of the following conditions may acquire the nationality of the Chinese Republic :—

- (1) Being the wife of a Chinese citizen ;
- (2) One whose father is a Chinese citizen and who is recognized by him as his child ;
- (3) One whose father is unknown, or whose father has not recognized him (or her) as his child ; but whose mother is a Chinese citizen and has recognized him (or her) as such ;
- (4) An adopted son of a Chinese citizen ;
- (5) One who acquires Chinese nationality by naturalization.

*Article 3.*—An alien acquires the nationality of the Chinese Republic when he (or she) has been recognized by the Chinese parents as their children, provided that he (or she) fulfils the following conditions :

- (1) For man and woman alike, he (or she) has not, according to the law of his or her native country, attained the age of majority ;
- (2) For a woman, she is not the wife of an alien.

*Article 4.*—An alien, or one who has no nationality, can be naturalized as a Chinese citizen by the permission of the Ministry of Interior.

The Ministry of Interior may not permit any person to be naturalized as a Chinese citizen unless he (or she) has fulfilled the following conditions :

- (1) Having his (or her) domicile in China for more than five years without interruption ;
- (2) Aged above twenty and having legal capacity as defined by the Chinese law and the law of his (or her) native country ;
- (3) Good moral character ;

- (4) Having enough property and skill and ability to support himself (or herself) ;
- (5) Having no nationality, or having lost the nationality of his (or her) native country through the acquisition of the nationality of the Chinese Republic.

For those who have no nationality at the time of their naturalization, the second condition as stated above can be fulfilled only according to the law of the Chinese Republic.

*Article 5.*—The wife of an alien, in living together with her husband, cannot be separately naturalized as a Chinese citizen.

*Article 6.*—Any of the following aliens, who has domicile in China, may, even if he (or she) does not comply with the requirements stated in Article 4, paragraph (2) number (1), be naturalized as a Chinese citizen :

- (1) One whose father or mother is a Chinese citizen ;
- (2) One whose wife is a Chinese citizen ;
- (3) One who is born in China ;
- (4) One who has his (or her) residence in China for more than ten years without interruption.

An alien who has fulfilled the first, the second, or the third condition stated above cannot yet be naturalized as a Chinese citizen unless he (or she) has his (or her) residence in China for more than three years except in the case of a person who has fulfilled the third condition stated above, and whose father or mother is born in China.

*Article 7.*—An alien who has his (or her) domicile in China and whose father or mother is a Chinese citizen may be naturalized as a Chinese citizen even though he (or she) does not fulfil the conditions stated above in Article 4, paragraph 2, numbers (1), (2) and (4).

*Article 8.*—An alien who has rendered exceptional service to China may be naturalized as a Chinese citizen even though he (or she) does not fulfil the conditions stated above in Article 4, paragraph 2.

The Ministry of Interior, in permitting the aforesaid alien to be naturalized as a Chinese citizen, must first secure authorization from the President of the Republic.

*Article 9.*—All naturalizations must be published in the "Government Gazette" ; otherwise, they may not hold good against a third party of good faith.

*Article 10.*—A naturalized citizen's wife and his children who have not attained majority according to the law of his native country, shall, because of his naturalization, acquire the citizenship of the Chinese Republic except where the law of the native country of his wife and children is in conflict with this provision.

The wife of a naturalized citizen, who, as stated above, may not acquire the citizenship of the Chinese Republic together with her husband, may apply for naturalization herself even though she does not fulfil the conditions stated above in Article 4, paragraph 2.

**Article 11.**—A naturalized citizen and his children who acquire the citizenship of the Chinese Republic because of his naturalization cannot hold the following public offices :

- (1) President or Vice-president of the Republic ;
- (2) Premier or Minister ;
- (3) Member of Parliament, or of a Provincial Assembly ;
- (4) President of the Supreme Court ;
- (5) President of the Administrative Court ;
- (6) President of the Board of Audit ;
- (7) Ambassador or plenipotentiary Minister to a foreign country ;
- (8) Military or naval commanding officer ;
- (9) Civil Governor of a province.

For a naturalized citizen who has acquired citizenship according to the provision of Article 8 the Ministry of Interior may ask the President of the Republic to remove the foregoing disqualifications with the exception of the first, provided that he has been naturalized more than five years. For others who have acquired their citizenship otherwise, the Ministry of Interior may do so, provided they have been naturalized more than ten years.

### CHAPTER III.—LOSS OF CHINESE NATIONALITY.

**Article 12.**—One shall lose his (or her) Chinese nationality if he (or she) falls in any one of the following categories :

- (1) Being the wife of a foreigner and having acquired the nationality of her husband ;
- (2) One whose father is an alien and has recognized him as his child ;
- (3) One whose father is unknown, or has not recognized him as his child ; and whose mother is an alien and has recognized him as her child ;
- (4) One who has voluntarily denaturalized himself or herself and acquired the nationality of another country ;
- (5) One who has accepted civil or military offices of a foreign government without any authorization from the Chinese Government and who has refused to resign from his posts when the Chinese Government has asked him to do so.

The application of the second and third provisions, mentioned above, should be confined to children who have not attained majority according to the Chinese law, and to woman who is not the wife of a Chinese citizen.

The application of the fourth provision should be confined to those who are more than twenty years old, who have the legal capacity as defined by Chinese law and who have got permission for denaturalization from the Ministry of Interior.

**Article 13.**—One who wishes to acquire the nationality of a foreign country as stated in Article 12, paragraph 1, number (4), shall not renounce his Chinese nationality unless the Ministry of Interior has considered that he is free from any one of the following conditions:



- (1) One who has attained military age, who is not exempted from military service, and who has not yet served in the army ;
- (2) Being in the active service of the army ;
- (3) Being a civil or military officer, or a member of legislative assembly, or a functionary of local administration.

**Article 14.**—A person shall not lose his Chinese nationality even though he (or she) fulfils the provisions of Article 12, paragraph 1, and is free from any one of the obligations mentioned in Article 13, provided that he (or she) falls in any one of the following categories :

- (1) A person who is a suspect or an accused in a criminal case ;
- (2) A person who has been sentenced and the execution of whose sentence has not yet been finished ;
- (3) A person who is a defendant in a civil case ;
- (4) A person against whom a compulsory execution has been ordered and has not yet been entirely carried out ;
- (5) A person who has been adjudged a bankrupt and whose bankruptcy has not been discharged by an order of court ;
- (6) A person who has delayed in the payment of taxes or who has suffered penalty because of his delay in the payment of the same, such penalty having not yet been discharged.

**Article 15.**—If a Chinese citizen acquires the nationality of a foreign country and loses that of his native country, his wife and his children who have not attained majority shall lose their Chinese nationality when they because of his naturalization are admitted to the nationality of the aforesaid foreign country.

**Article 16.**—One who has lost his Chinese nationality, shall surrender the rights and privileges which only a Chinese citizen can enjoy.

One who before the loss of his Chinese nationality possesses properties as a result of the rights and privileges ascribed to a Chinese citizen must turn them to the national treasury, provided that within the delay of one year he does not concede them to a Chinese citizen or citizens.

#### CHAPTER IV.—RECOVERY OF CHINESE NATIONALITY.

**Article 17.**—A Chinese who has, because of her marriage with a foreigner, lost her Chinese nationality, can after the termination of such marriage relationship regain her Chinese nationality by the authorization of the Ministry of Interior, provided that she has her residence in China and fulfils the conditions stated above in Article 4, paragraph 2, number (5)

The foregoing provision can be applied *mutatis mutandis* to a woman who has lost her Chinese nationality under the conditions stated above in Article 15.

**Article 18.**—One who has, according to Article 12, paragraph 1, number (4), lost his Chinese nationality, can regain it by the permission of the Ministry of Interior, provided that he has his residence in China and fulfils the conditions stated above in Article 4,

paragraph 2, number (3-5) inclusive, except in the case of a naturalized citizen who later denaturalizes himself, or his children who have acquired Chinese nationality because of the naturalization of their father and who have lost it afterwards.

This provision will, however, be applied *mutatis mutandis* to the children who have lost their nationality according to Article 15 and who fulfilled the conditions stated above in Article 4, paragraph 2, number (2).

*Article 19.*—The provisions stated above in Article 10, shall be applied *mutatis mutandis* to the cases stated in Articles 17 and 18.

*Article 20.*—A citizen who has recovered his nationality, may not, within three years from the day of the recovery of his nationality, hold public offices as enumerated above in Article 11, paragraph 1.

The Ministry of Interior may remove the foregoing restriction when it has obtained permission from the President of the Republic.

#### CHAPTER V.—SUPPLEMENTARY RULES.

*Article 21.*—Rules for the application of the law stated above will be determined by subsequent decrees.

*Article 22.*—The aforesaid law will come into force from the day of its promulgation.

## DETAILED REGULATIONS FOR THE APPLICATION OF THE REVISED LAW OF NATIONALITY.

Promulgated on November 3rd, 1913 ;

Revised on February 12th, 1915.

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—A person, who should, before the enforcement of the Revised Law of Nationality, present a petition, a statement of his (or her) willingness to be naturalized, or a certificate of guarantee according to the provisions of the Law of Nationality and the Detailed Regulations for its application but has not done so or has not had such petition, etc., duly approved by the authorities, shall present such petition, etc., in accordance with the provisions of the Revised Law of Nationality and these Regulations.

**Article 2.**—If one who has, in accordance with the provisions of the Law of Nationality and of the Detailed Regulations for its application, sent in one's petition for naturalization, for denaturalization, or for the recovery of Chinese nationality, has not, up to the day of the coming into force of the Revised Law of Nationality, had them duly approved by the authorities, the Ministry of Interior may still give approval to the aforesaid petition.

**Article 3.**—For those who will acquire Chinese nationality according to the provisions of Article 2, number (1-4) inclusive, of the Revised Law of Nationality, they, or their husbands, or their fathers, or their mothers, as the case may be, shall send in their petitions to the competent authorities of the districts where they reside.

**Article 4.**—A person who will acquire Chinese nationality according to the provisions of Article 2, number (5), of the Revised Law of Nationality, shall send in the following petitions to the local official of the district where he (or she) resides to be transmitted through the competent superior to the Ministry of Interior for approval :

- (1) A statement of the willingness to be naturalized ;
- (2) A certificate of guarantee.

The certificate stated in number 2 of the above paragraph shall be signed by two or more citizens of the district where the applicant has his (or her) residence.

**Article 5.**—A person who will recover Chinese nationality in accordance with the provisions of Articles 17, 18 and 19 of the Revised Law of Nationality, shall do so according to the provisions of Articles 3 and 4 of these Regulations.

**Article 6.**—The certificate of permission to be issued by the Ministry of Interior, where such permission is necessary according to the provisions of the Revised Law of Nationality, shall be effective on and from the day of its publication in the Government Gazette.



**Article 7.**—The certificate of permission for naturalization issued to a person who has acquired Chinese nationality in a manner which is found to be not in conformity with the provisions of the Revised Law of Nationality, shall be nullified. The nullification of the aforesaid certificate shall be published in the "Government Gazette."

**Article 8.**—A person who will in accordance with the provisions of the Revised Law of Nationality, lose Chinese nationality, shall send in a petition to the local official of the district where he (or she) resides to be transmitted to the Ministry of Interior for its approval.

**Article 9.**—When a person who has been permitted to give up Chinese nationality is found to be not free from any of the conditions enumerated in Article 14 of the Revised Law of Nationality, such permission shall be nullified.

**Article 10.**—Any citizen who, in acquiring the citizenship of a foreign country before the enforcement of the Revised Law of Nationality, has not, in accordance with the provisions of the old Law of Nationality and of the Detailed Regulations for its application, sent in a petition to the authorities, shall send in such petition according to the provisions of Article 8 of these Regulations within the delay of six months from the day of the enforcement of the Revised Law of Nationality.

If, within the time limit stated above, the aforesaid citizen has not yet sent in such petition, the local authorities may, after ascertaining the case, ask the Ministry of Interior to declare that he (or she) has lost Chinese nationality.

**Article 11.**—Before and after the enforcement of the Revised Law of Nationality, any Chinese citizen who acquires the nationality of a foreign country, but who still holds public office under the Chinese Government, shall be removed from his office after the authorities have ascertained the case.

**Article 12.**—The petition, the statement of intention to be naturalized, the certificate of guarantee, and the certificate of permission for naturalization mentioned in the Regulations shall be filled up according to the forms specifically prescribed.

**Article 13.**—These Regulations shall come into force from the day of their promulgation.

## PRESCRIBED FORMS.

### 1.—FIRST FORM.

### The form of a Petition.

I....., the petitioner, born in.....,  
name district

....., residing now in No.....,  
native country street

..... aged.....and engaged in  
district province

....., beg to ask the Ministry of Interior for its  
occupation

permission to be admitted to the nationality of the Chinese Republic (or to recover Chinese nationality, or to expatriate himself) in accordance with the provision of Article.....of the Revised Law of Nationality. I, therefore, present herewith to the Ministry of Interior for its perusal and approval, a statement expressing my willingness to be naturalized and a certificate of guarantee. (In case the petitioner asks for permission to expatriate himself, he needs not to add this sentence here).

Signed .....  
*The petitioner.*

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*The writer of the petition.*

..... of the Chinese Republic.  
 Day month year

## 2.—SECOND FORM.

The Form of a Statement Expressing One's Willingness  
 for { Naturalization  
 { the Recovery of Chinese Nationality

I, ..... the petitioner, born in .....  
 name district

....., aged....., engaged in .....  
 native country occupation

and residing now in No.....  
 street district or hsien

..... am willing to acquire (or to recover) Chinese  
 province

nationality in accordance with the provision of Article.....  
 of the Revised Law of Nationality and to obey all the laws and  
 orders of the Chinese Republic. Hence I respectfully submit this  
 statement expressing my willingness to be naturalized to the Ministry  
 of Interior for its perusal and approval.

Signed and Sealed .....  
*The petitioner.*

..... of the Chinese Republic  
 Day month year

## 3.—THIRD FORM.

### A Certificate of Guarantee.

Mr. (or Mrs.)....., a citizen of .....  
 name of the applicant name of

.....wishes to apply for naturalization (or for the  
 recovery of Chinese nationality) in accordance with the provision of

Article.....of the Revised Law of Nationality, we, the petitioners

....., born in .....  
 name of the first guarantor district

....., aged....., engaged in.....  
 province occupation

and now residing in No.....  
 street district

....., and ..... born in.....  
 province name of second guarantor district

....., aged ....., engaged in .....  
 province occupation

and now residing in No.....  
 street district

....., beg hereby to certify that all that the applicant  
 province

has said in his (or her) petition is true. We are willing to act as  
 guarantors for him and, therefore, present this certificate of  
 guarantee.

Signed .....  
 Name

.....  
 Name

..... of the Chinese Republic.  
 Day month year

#### 4.—FOURTH FORM.

Certificate of Permission for  
 { Naturalization  
 the Recovery of Chinese Nationality  
 Expatriation

.....wishing to { acquire  
 name of person { lose  
 recover } Chinese

nationality, aged.....born in.....  
 ....., now residing in.....  
 .....,  
 .....and engaged in.....  
 occupation

and ;

The persons to { acquire  
 lose  
 recover } Chinese nationality together with the



foresaid, if any :—

His wife, aged....., born in .....,  
 ....., and now residing in  
 .....,  
 .....

His son, aged....., born in.....  
 ....., and now residing in  
 .....,  
 .....

His daughter aged....., born in .....,  
 ....., and now residing  
 in .....,  
 .....

The aforesaid person or persons, in asking for { naturalization  
 expatriation  
 the recovery  
 of Chinese  
 nationality

according to the Revised Law of Nationality, is or are found to have completely complied with the provisions of the same. The Ministry of Interior hereby give him this certificate, having registered his name or their names in the official record.

This certificate is issued by the Ministry of Interior to

.....

.....of the Chinese Republic.

Day month year

No.....

## MINING ENTERPRISE REGULATIONS

Promulgated by the Chinese Government, March 11th, 1914.

*Translated and published by the Commission on Extraterritoriality, Peking.*

### CHAPTER I.—GENERAL RULES.

**Article 1.**—Mining enterprise (Kuang Yeh) shall comprise prospecting (T'an Kuang), mining (T'sai Kuang) and other operations appertaining to them.

**Article 2.**—Mining enterprise rights shall comprise rights both of prospecting and of operating mines.

**Article 3.**—A citizen of the Republic of China, or a corporation which was formed in accordance with the law of the Republic of China, may according to these Regulations secure the right of mining enterprises.

**Article 4.**—Citizens of treaty nations may join with Chinese citizens in acquiring mining rights, but they must conform with these Regulations and all other laws connected with them.

Foreigners shall not hold more than 50 per cent. of the total number of shares.

Each foreigner shall present to the Minister of Agriculture and Commerce, or to the Director of the Mining Supervision Office,\* a document granted by a diplomatic officer, or consul representing his nationality, certifying his willingness to adhere to these Regulations and to all other laws connected with them.

**Article 5.**—Should two or more persons carry on mining by joint enterprise, or petition for permission to carry on mining under conditions of joint enterprise, one of them shall by mutual agreement be elected as representative and duly report this fact to the Director of the Mining Supervision Office of the district. In the absence of such report the Director of the Mining Supervision Office shall appoint one of them as representative.

Persons who have joined together for mining enterprise, or who have petitioned for joint mining enterprise as stipulated in the preceding paragraph, shall be considered as having agreed to work jointly.

**Article 6.**—The various classes and kinds of minerals are as follows :

Class 1 :—Gold, silver, copper, iron, tin, lead, antimony, nickel, cobalt, manganese, zinc, aluminium, arsenic, mercury, bismuth, platinum, iridium, molybdenum, chromium, uranium, coals and precious stones.

Class 2 :—Rock crystal, asbestos, mica, corundum, emery, gypsum, apatite, barytes, nitrates, sulphur, pyrites, borax, fluor-spar, marble (especially for furnishing), felspar, talc, graphite, peat, amber, asphalt, bitumen, pumice, meerschaum,

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\*After the abolition of the Mining Supervision Office, the Office of the Commissioner of Industry (or the Office of the Commissioner of Finance in case there is no such Office in a province) shall take the place of the Mining Supervision Office.

kaolin, diatom earth, tripolite, magnesium earth, fuller's earth, stones used to make pigments.

**Class 3 :—**Slate, limestone, sandstone, granite, porphyry, dolomite, earth lime, marl, clay, fire-clay, other useful stones quarried for architectural and manufacturing purposes.

The working of salt and petroleum is a State monopoly (chuan pan), and these minerals are not included in the three classes of minerals above enumerated.

**Article 7.**—Minerals not enumerated in the preceding Article may be classified by the Minister of Agriculture and Commerce and their classification promulgated by Ministerial Order.

**Article 8.**—The minerals specified in Article 6, as well as waste products from abandoned mines, cannot be prospected or mined except by previously obtaining approval of the Minister of Agriculture and Commerce or the Director of the Mining Supervision Office. All kinds of mineral springs, the public property of local communities, are not included in this limitation.

**Article 9.**—With regard to the minerals specified in Article 6, Class 1, those persons (whether surface-owners or not) who shall first petition for claims shall have the prior right to secure such claims.

**Article 10.**—As regards the minerals specified in Article 6, Class 2, the surface-owner shall have the prior right to secure the claim. Should the surface landowner declare unwillingness to secure a claim or having registered fail to work the mine within one year from registration the Minister of Agriculture and Commerce or the Director of the Mining Supervision Office may allot the claim to others.

**Article 11.**—The minerals specified in Article 6, Class 3, shall be exploited by the surface-owner, or the property may be leased to others for exploitation, but the previous approval of the higher local administrative authorities must be obtained.

In granting their approval and consent to applications dealt with in the preceding paragraph the higher local authorities shall notify the Director of the Mining Supervision Office.

#### CHAPTER II.—MINING AREAS.

**Article 12.**—The mining area comprises the whole of the area of land within which the holder of the claim has been granted these rights by the Government.

**Article 13.**—The following lands may not be applied for as mining areas :

- (1) Lands within one li from the boundaries of the tombs of the Ancient Sages, Emperors, or Kings.
- (2) Lands which are of importance to fortifications, strategic points, and all arsenals and naval bases, unless approval has been obtained from the controlling Government Offices concerned.
- (3) Areas within one li from commercial centres or trading markets, unless approval and consent has been obtained from the controlling Government Offices concerned.
- (4) Areas within 400 chih (Chinese feet) from the sites of official or public buildings, public parks, famous ancient



monuments, public thoroughfares, railways and important waterways or water systems, etc. unless approval have been obtained from the controlling Government Offices concerned, the owner, or other persons interested.

*Article 14.*—The limits of mining areas shall be fixed by straight lines. The underground boundaries shall be the vertical projection downward of the surface boundary lines.

*Article 15.*—The superficial measurements of the mining area shall be reckoned by square li and mow: 60 square chang are equivalent to 1 mow; 540 mow are equivalent to square li.

*Article 16.*—The minimum area for coal mining shall be more than 270 mow and the maximum area not more than 10 square li. The minimum area of other mines shall be over 50 mow and the maximum area 5 square li.

Should the Minister of Agriculture and Commerce deem it absolutely necessary owing to special circumstances to modify the stipulated areas, limits laid down in the preceding clause may be increased or decreased.

*Article 17.*—Within one mining area there shall not be established two or more rights of mining enterprise. In case the minerals are of different kinds or are affected by the stipulations of Article 35 this clause shall not apply.

*Article 18.*—Should tunnels for purposes of drainage, for ventilation, or transportation, extending outside of the mining area boundaries, be driven, these shall not be included in the mining area, but the consent of the director of the Mining Supervision Office shall be obtained before such work is carried out.

Should mineral ore be discovered in tunnelling, in accordance with the preceding paragraph, the fact shall be immediately reported to the Director of the Mining Supervision Office.

In case the Director of the Mining Supervision Office shall consider the value of the reported mineral discovery as specified in the preceding paragraph to be such as to make it worth working, he may grant a time limit to the holder of the mining area in which to take it over as a mining area.

### CHAPTER III.—MINING ENTERPRISE RIGHTS.

*Article 19.*—Mining enterprise rights shall be considered as proprietary rights, and shall be subject to all laws governing immovable property. In a mining area where the mining rights and other proprietary rights belong exclusively to one individual, the other proprietary rights shall continue to exist.

*Article 20.*—Mining enterprise rights shall not be divided.

*Article 21.*—Except for purposes of legacy, transfer, arrears of dues, or acts under compulsion by the properly constituted authority, mining enterprise rights shall not be made use of as objects of privilege. Mining enterprise rights may, however, be mortgaged.

*Article 22.*—A petition for registration by the Directors of the Mining Supervision Office is required for the following matters; should, however, operation of any mining enterprise rights be subjected to certain restrictions no petition requesting the cancellation of the right will be entertained—

- (1) Establishment, alteration, transfer, cancellation, or restriction of mining enterprise rights.
- (2) In case of mortgage of the mining enterprise right, alteration, transfer, cancellation, and limitation of such rights of mortgage.
- (3) Withdrawal from partnership in joint mining enterprise.

*Article 23.*—Regulations for registration under the preceding article shall be determined by another special legal enactment.

*Article 24.*—With regard to matters that require registration under Article 22 no case shall be operative until due registration has been effected. Legacy of mining enterprise rights, cancellation in consequence of expiry of mining enterprise rights, and sale by auction in accordance with these Regulations, are excluded from this registration.

*Article 25.*—Those who wish to prospect shall file a petition with the Director of the Mining Supervision Office concerned, for a permit. This petition shall be accompanied by maps and explanatory remarks. The Director shall, should he deem it necessary, instruct local officials to carry out investigations or he himself may appoint a deputy to make a personal inspection of the area applied for.

*Article 26.*—Prospecting rights shall be limited to a period of two years.

*Article 27.*—Previous consent of the Director of the Mining Supervision Office must be obtained before sale or other disposal of minerals obtained by prospecting. Taxes must be paid on such minerals in accordance with these Regulations.

*Article 28.*—Any person desiring to operate a mine shall file a petition accompanied by maps and remarks with the Director of the Mining Supervision Office concerned. The Director shall in turn petition for permission from the Minister of Agriculture and Commerce. Registration shall be effected after due receipt of this permission. In case the Minister of Agriculture and Commerce deem it necessary he may instruct the Director or appoint a special deputy to make personal investigation into the case.

In accordance with the preceding paragraph the Director of the Mining Supervision Office may instruct local officials to investigate or inspect mining areas.

*Article 29.*—During the term of prospection a petitioner for a mining or prospecting claim may change the name over which application is made subject to securing the consent of the Director of the Mining Supervision Office. After the right of operation has been secured change of such name may be effected only with the consent of the Minister of Agriculture and Commerce.

*Article 30.*—The petitioner for a mining claim must prove that the area applied for contains the mineral he desires to mine.

*Article 31.*—Should the maps and specifications filed by the petitioner be found to be incomplete the Director of the Mining Supervision Office or the Minister of Agriculture and Commerce may impose a time limit within which the petitioner shall make the necessary corrections or re-petition. In case the corrections or the

new petition be not filed within the time limit imposed the original petition shall be cancelled.

*Article 32.*—Should the Minister of Agriculture and Commerce or the Director of the Mining Supervision Office consider the area over which prospecting rights have been applied for to be actually suitable for operation as a mine, he may impose a time limit within which the petitioner shall file an application for operating rights in the said area. In case the petitioner shall fail to petition within the imposed time limit the Minister or the Director may allow other parties to apply. Should the Minister of Agriculture and Commerce consider that the area for which a petition has been received asking for the right to work, needs further prospecting, the preceding paragraph shall apply.

*Article 33.*—In case the situation and shape of the mining area applied for does not agree with the situation and shape of the mineral deposit, thereby causing prejudice to profitable working of the mine, the Minister of Agriculture and Commerce, or the Director of the Mining Supervision Office, may be submitted. In case the amended petition is not filed within the time limit imposed, the original petition shall be cancelled.

The petitioner may of himself petition for correction of the nature described in the preceding paragraph.

*Article 34.*—The Director of the Mining Supervision Office shall make an investigation regarding the area applied for as a mining claim, and should the place be unsuitable for such enterprise or should the enterprise be injurious to the public interest, the petition shall be rejected.

*Article 35.*—If, on account of the situation and nature of the mineral deposit, it be necessary to make an excavation into an adjacent claim, a consultation must be held with the neighbouring proprietor. A document certifying to his consent for such acts must be obtained, and a petition may then be sent through the Director of the Mining Supervision Office to the Minister of Agriculture and Commerce, for permission to increase or alter the claim. In case excavation into an adjoining mining area is desired for other reasons than the above, in addition to securing the written consent of the holder of the claim concerned written consent of the mortgagee, if any, must be obtained and be presented with the petition.

*Article 36.*—Should the area, over which prospecting rights are being applied for, overlap a claim for which mining enterprise rights have already been granted to another party, and the mineral sought be of the same kind in both cases, rights as to the overlapping portion shall not be granted.

*Article 37.*—Should the area over which operating rights are being applied for overlap a claim as to which prospecting rights have already been granted to another party, and should the mineral sought be also of the same kind in both cases, rights as to the overlapping portion shall not be granted, but this does not apply to the case stated in Article 35.

*Article 38.*—Should the area over which operating rights are being applied for overlap the prospecting area secured by another party and the mineral be similar, the overlapping portion shall be dealt with according to the stipulations of Article 32, par. 1.



**Article 39.**—Should the area over which mining rights are being applied for overlap the mining area of another party, but the mineral sought be of a different kind, the Director of the Mining Supervision Office shall duly notify the holder of the mining right as to this fact. This does not include the case in which injury would be done to the mining operations of others.

For sixty days after serving notifications, the original holder of mining enterprise rights over the area concerned shall enjoy priority in acquiring the right applied for.

The preceding two clauses are not applicable to circumstances set forth under Article 35.

**Article 40.**—In case the claim wherein prospecting or operating rights are applied for be similar to the area wherein prospecting or operating rights are applied for by another, prior right to the area shall belong to the person whose date of application was the earlier. In case the applications were both sent in at the same time the Director of the Mining Supervision Office shall impose a time limit within which the two parties are to come to mutual agreement, and then submit their petitions again.

If no petition be forthcoming within the set period, the case shall be decided by drawing lots.

The stipulations laid down in the first clause of this article are not applicable to cases set forth under Article 33, 35, and 39 of the Regulations.

In case the claim wherein prospecting rights are applied for overlaps a claim wherein operating rights are applied for and should the petitions be of the same date and the mineral sought be identical, the operating application shall have priority.

**Article 41.**—Within thirty days after the expiration of prospecting time limit, the holder of the prospecting rights shall have priority as to securing operating rights for similar mineral in that area.

Should another party petition for mining enterprise rights in the same claim as stated in the preceding paragraph, and if the petition be for another kind of mineral, the procedure under Article 39 shall apply. In this case the petitioner who applies first shall secure the claim.

**Article 42.**—In case the applicant for prospecting right shall further apply for operating rights for the same mineral, and should there be overlapping applications from others, then the date of his application for prospecting shall be deemed the date of his application for operating rights. This does not include the case provided for under Article 40, Clause 4.

The above shall also apply to the case in which the applicant for operating rights shall change his application to one for prospecting.

The stipulations contained in the two preceding paragraphs shall not apply to cases set forth under Articles 32 and 33, Clause 1, relative to applications after lapse of time limit.

**Article 43.**—In case of increase, decrease, amalgamation, division or other alteration in prospecting claims, petitions shall be filed with the Director of the Mining Supervision Office, applying for his approval and registration. If the changes be desired in a mining claim the petition shall be filed with the Minister of

Agriculture and Commerce through the Director of the Mining Supervision Office, and only after the receipt of approval and due registration by the Director can the rights applied for become legally effective.

*Article 44.*—The legal holder of a mining claim shall from time to time submit plans with drawings and explanation, indicating work to be performed, for approval by the Director of the Mining Supervision Office.

The legal holder of the operating rights shall proceed with the work in the manner approved by the Director of the Mining Supervision Office.

As regards the above-mentioned plans and explanations, should alterations be proposed in working the claim the holder of the claim shall obtain the approval of the Director of the Mining Supervision Office previous to proceeding to active work.

*Article 45.*—The legal holder of the claim shall keep a plan of the underground workings and also keep in his office a record of the mining operations. A duplicate copy of each shall be filed with the Mining Supervision Office.

Forms for the plan of survey and diary, mentioned in the preceding paragraph, shall be laid down by order of the Minister of Agriculture and Commerce.

*Article 46.*—Rights to a mining claim shall be cancelled for any of the following causes :

- (1) If after registration for one year no operations have been begun without reasonable cause, or work shall have been suspended for one year or more during operation.
- (2) If the mining operations be injurious to the public interest.
- (3) If there be want of compliance with the Mining Police Regulations, as to precautions ordered to be observed to avoid danger or temporary suspension of work.
- (4) Non-compliance with work in the approved plans and descriptions.
- (5) Failure to pay mining taxes at due date.
- (6) If sanction shall have been given in error.

*Article 47.*—The holder of a claim shall in offering his mining enterprise rights as security for the raising of a loan or mortgage, conform to the procedure set out in the following rules :

- (1) The borrowing of loans upon the security of mining enterprise rights shall not be effective unless previous permission of the Minister of Agriculture and Commerce has been secured.
- (2) After mining enterprise rights have been pledged, if the claim holder shall desire to divide, amalgamate, decrease or increase the area of his claim, the approval of the lender shall be obtained or a settlement made with various lenders.
- (3) Should mining enterprise rights be cancelled or voluntarily abandoned after due registration, the Director of the Mining Supervision Office shall inform the lenders to whom the claim has been pledged. Within thirty days of receipt of notification the creditors may file a petition to the Director of the Mining Supervision Office, requesting an auction

of the claim. But this procedure is not applicable when cancellation is due to circumstances laid out under Article 46, Clauses 2 and 6.

- (4) During this period in which the claim is for sale or auction, the right may be considered as still existing.
- (5) If after deduction of expenses in connection with the sale and repayment of the debt with interest there shall remain any surplus this shall be handed over to the original holder of the mining enterprise rights.
- (6) The rights to a claim acquired by the new proprietor in accordance with the provisions of Article 3, or Article 4, shall be considered as having been obtained from the time when the cancellation was registered.

*Article 48.*—After the cancellation or voluntary abandonment of a mining claim, in case the original holder of the claim shall personally undertake disposal of the property, he may conform to the procedure laid down in Sections 4, 5 and 6, of the preceding article.

*Article 49.*—In case a deputy has to be appointed to inspect personally the claim over which prospecting or mining enterprise rights are sought, the expense of such inspection shall be borne by the petitioner.

*Article 50.*—In case the owner of an adjoining claim, or any other party concerned, shall for some reason apply for investigation, he may petition the Director of the Mining Supervision Office to despatch a deputy to inspect the claim. The expense of such inspection shall be borne by the petitioner.

#### CHAPTER IV.—USE OF LAND.

*Article 51.*—The term "person concerned" in these Regulations is to be taken as referring to the person who has the right of proprietorship over the land.

*Article 52.*—The term "compensation money" in these Regulations is to be taken as referring to rent paid on land. It also refers to compensation for ordinary damage and actual loss incurred by the landlord and parties concerned.

*Article 53.*—In case there is necessity that a petitioner for a claim or a holder of a claim shall carry on surveying operations or make investigations on the land of other persons he may do so, but the previous consent of the Director of the Mining Supervision Office must be obtained.

In carrying out operations on the land of other persons as set forth in the preceding paragraph, previous notice is to be given to the landowner or to the occupier of the land.

*Article 54.*—In case the removal of obstacles is necessary in order to carry out surveying or investigating operations properly, previous consent of the Director of the Mining Supervision Office must be obtained.

After due consent has been obtained under the preceding paragraph, notice is to be given to the landowner or the occupier of the land before removal of such obstacles.

*Article 55.*—In the event of immediate necessity for protection against imminent danger in mining operations, the entry and use of



land belonging to other persons is permissible, but immediate report must be made to the Director of the Mining Supervision Office, and simultaneous notice must be given to the owner or occupier of the land.

*Article 56.*—In case the owner of the land or concerned party shall sustain damage and loss in consequence of actions provided for in the preceding three articles fair compensation shall be paid to them by the claim-holder.

*Article 57.*—The use by a claim-holder of land belonging to other persons for the objects enumerated below is permissible :

- (1) Boring and sinking shafts.
- (2) Heaping and storing mining products, earth, stones, explosives, timber, firewood, fuel, tailings and slag.
- (3) The erection of ore-dressing plants and smelting works.
- (4) The construction of heavy and light railways, roads and waterways for transport, water and steam pipes, drains, reservoirs, wells, rope-ways and electric wires.
- (5) Construction of plant and other works necessary for mining enterprises.

*Article 58.*—When the land of others is utilised according to above provisions, the approval of the Director of the Mining Supervision Office shall first be obtained. At the same time a petition shall be submitted with a working plan, drawing and description, to the Director of the Mining Supervision Office, for his approval.

After granting such permission the Director of the Mining Supervision Office shall immediately give public notice, or notify the landowner or person concerned.

After publication of the notice, or after notification to the landowner, should the claim-holder desire to obtain the right to the land he must consult with the landlord or person concerned.

With regard to the provisions of the two preceding paragraphs, should the land be Government property he may apply for it to the official in charge.

*Article 59.*—When the land is utilised the landlord, or other person interested, must be adequately compensated.

*Article 60.*—In case use of the land is to extended over a longer period than three years, or if in consequence of such use its character shall undergo change, the holder of the mining enterprise rights may negotiate with the landowner, or the landowner may demand a lump sum as compensation money according to the market value of the land. When the mining operations have ceased, or use of the land is terminated, the land in question shall be returned to its original owner.

*Article 61.*—In case use of a portion of the land shall have decreased the value of the remaining portion of the land, or should some other kind of damage have resulted, the holder of the mining enterprise rights shall pay to the owner or the parties concerned fair compensation. Should the rest of the land have lost its former usefulness the procedure under the preceding clause shall be followed.

*Article 62.*—If in utilising the land of others it is found necessary to erect buildings, or alter the existing roads, ditches, walls, fences, and other works, the holder of the mining enterprise rights shall pay

fair compensation money to the owner. This does not include the case in which the matter has already been dealt with according to Article 60.

*Article 63.*—After public notice or notifications as provided under Article 58, in case the owner or party concerned shall desire to alter the form or nature of the land, erect new buildings, or make extensive repairs and additions, the consent of the Director of the Mining Supervision Office must be obtained. Failing this no applications for payment of compensation money for outlay incurred will be entertained.

*Article 64.*—After public notice or notification, as stated in Article 58, should the claim be abandoned or altered, any loss sustained by the owner of the land or party concerned shall be fairly compensated by the holder of the mining enterprise rights.

*Article 65.*—The owner or party concerned may demand that the holder of the mining enterprise rights shall furnish satisfactory guarantees with regard to compensation money.

*Article 66.*—If use of the land has been agreed on by mutual arrangement, judgment given, or arbitration, the claim-holder may, by a deposit of compensation money or furnishing a guarantee, secure the immediate use of the land, pending decision as to the amount of compensation money.

*Article 67.*—The landlord, or party concerned, may refuse permission for the use of land if the claim-holder shall fail to pay compensation, or to furnish a guarantee.

*Article 68.*—During the period of utilisation of the land, the rights of ownership shall be invested in the claim-holder. Other rights of the landowner shall also be temporarily suspended, but this does not include employment of the land not entailing interference with the claim-holder.

*Article 69.*—After use of the land is terminated it shall be restored to its original condition and handed back to the original owner. In case it is not possible to restore the land to its original condition, and loss shall thereby have been entailed, compensation money shall be paid. This does not include the case dealt with under Article 60.

*Article 70.*—The regulations controlling the use of land are applicable to the rights of use of water.

#### CHAPTER V.—MINERS.

*Article 71.*—Labourers working in connection with a mining enterprise are called miners.

*Article 72.*—The rules drawn up by the holder of a claim for governing the duties of miners shall be submitted to the Director of the Mining Supervision Office, and his approval must be obtained before they can be enforced.

*Article 73.*—The holder of the claim shall keep in his office a register of the names of the miners in his employ. The form of such register shall be in accordance with that promulgated by ministerial order of the Ministry of Agriculture and Commerce.

*Article 74.*—The wages of miners shall be paid in currency accepted by the public. The payments shall be made on a date or dates previously fixed, and in one or two instalments each month.

*Article 75.*—When a miner is dismissed, the claim-holder shall, upon request of the miner, furnish him with a certificate giving particulars of the period he has served in the mine, the kind of work he has done, his capacity, his rate of wages, and the cause of his dismissal.

*Article 76.*—In case any miner shall be wounded, fall ill, or die, in consequence of services rendered to the mine, the claim-holder shall pay medical or compassionate allowance.

*Article 77.*—With regard to the age of miners, the hours of work, and the employment of women and child workers, the Minister of Agriculture and Commerce may regulate them.

#### CHAPTER VI.—MINING TAXATION.

*Article 78.*—Mining taxes shall be of the following kinds :

- (1) Mining area tax.
- (2) Mineral production tax.

*Article 79.*—The rate of taxation on mining areas is as follows :

- (1) For mining areas in which minerals included under Class 1 of Article 6 are worked, annual tax per mow, 30 cents.

For alluvial platinum, gold, tin, or iron found in river beds, annual tax per 10 chang in length, 30 cents.

For minerals under Article 6, Class 2, annual tax per mow, 15 cents.

- (2) If the claim is being prospected the above tax shall be reckoned at .05 cent.

*Article 80.*—The above taxes shall be distinct from and in addition to the land tax.

*Article 81.*—Mineral production tax is as follows :

- (a) For minerals enumerated in Article 6, Class 1, fifteen per mille of the market price at the place of production.
- (b) For minerals enumerated in Article 6, Class 2, ten per mille of the market price at the place of production.

*Article 82.*—The Mining Area Tax and Mineral Production Tax specified in Articles 79 and 81 respectively shall be paid in two instalments.

*Article 83.*—For minerals specified under Article 6, Class 3, neither mining area nor mineral production taxes shall be levied.

#### CHAPTER VII.—MINING ENTERPRISE POLICE.

*Article 84.*—With reference to matters in connection with police on the mines they shall be undertaken by the Minister of Agriculture and Commerce, and the Director of the Mining Supervision Office concerned. The Regulations shall be drawn up by ministerial order of the Ministry of Agriculture and Commerce.

*Article 85.*—In case the Minister of Agriculture and Commerce or the Director of the Mining Supervision Office, shall consider any work in a mining enterprise to be dangerous or injurious to the public welfare, the holder of the mining enterprise rights shall be ordered to adopt precautionary measures or temporarily to suspend operations.

*Article 86.*—The Minister of Agriculture and Commerce, or the Director of the Mining Supervision Office may order the claim-holder to employ or change technical men.



The qualifications and duties of the technical men mentioned under the preceding clause be laid down by ministerial order of the Ministry of Agriculture and Commerce.

*Article 87.*—Precautionary instructions adopted against danger in mining enterprises shall continue to be in force for one year after cancellation of the mining enterprise rights. The Minister of Agriculture and Commerce, or the Director of the Mining Supervision Office, may order the claim-holder to take precautions against danger.

#### CHAPTER VIII.—JUDGMENTS, COMPLAINTS, LAWSUITS.

*Article 88.*—As regards granting or refusal of claims, should the petitioner object, appeal may be filed with the Minister of Agriculture and Commerce, within a period of three months. If the judgment be not in accordance with law or injurious to rights of the party an administrative lawsuit may be instituted.

*Article 89.*—In the event of failure to arrive at mutual agreement by consultation under Article 35, paragraph 1, the case may be laid before the Director of the Mining Supervision Office by petition for decision.

In case of objection to the award of the Director of the Mining Supervision office further appeal may be made to the Minister of Agriculture and Commerce. If his judgment be not in accordance with law or injurious to the rights of the party an administrative lawsuit may be instituted.

*Article 90.*—When the claim-holder does not agree with the decision to cancel his rights, appeal may be made to the Minister of Agriculture and Commerce. If his judgment be not in accordance with law or injurious to the rights of the party an administrative lawsuit may be started.

*Article 91.*—If no settlement can be reached by consultation with regard to the use of the area, the compensation money, or the security, the proprietor of a mining enterprise may petition the Director of the Mining Supervision Office for decision.

In case the claim-holder does not agree with the award in connection with the use of land under the preceding paragraph, appeal may be made to the Minister of Agriculture and Commerce. If his judgment be not in accordance with law or injurious to the rights of the party an administrative lawsuit may be started.

In the event of dissatisfaction at the decision under the first paragraph, as regards compensation money and security, a civil lawsuit may be instituted according to the procedure for civil lawsuits.

*Article 92.*—In case of dissatisfaction with the awards or judgments an appeal, or administrative lawsuit, may be instituted within sixty days from receipt of the official notice of award or judgment. In case no official notice or award be received, the date of publication of the public notification shall be the date to be reckoned from.

*Article 93.*—If foreigners, partners of Chinese citizens or employed by Chinese citizens, shall have any dispute arising from mining affairs, the case shall be settled by the decision of the Director of the Mining Supervision Office.

## CHAPTER IX.—PUNISHMENTS.

*Article 94.*—Any fraudulent acquisition of mining enterprise rights or secret working of minerals without obtaining mining enterprise rights the punishment shall be imprisonment for a period not exceeding three years or a fine not exceeding \$3,000.

*Article 95.*—Surreptitious sale or mortgage of mining enterprise rights shall receive a punishment similar to that inflicted under the preceding clause.

*Article 96.*—Inadvertent excavation outside the registered boundaries of a claim shall be punished by a fine not exceeding \$500.

*Article 97.*—In the event of fine or punishment in accordance with the provisions of the above three articles the mineral won shall be confiscated. In case this ore has been sold or otherwise made use of, its value shall be recoverable to the authority.

*Article 98.*—Violations of stipulations under Article 13, or non-compliance with orders issued under Arts. 85 and 87, shall entail a fine not exceeding \$500.

*Article 99.*—For violation of provisions set out under Articles 27, 44 and 74, a fine not exceeding \$200 shall be imposed.

*Article 100.*—For violation of provisions under Articles 54, 72 and 73, a fine not exceeding \$100 shall be imposed.

*Article 101.*—In case of hindrance or refusal of permission to officials to scrutinise the registers connected with the mining enterprise, a fine not exceeding \$50 shall be imposed.

*Article 102.*—Evasion of payment of taxes or attempts at evasion of payment of taxes shall be punishable by a fine of three times the amount of the tax leviable.

*Article 103.*—In case the provisions of these Regulations or instructions issued under these regulations be violated, the following provisions of the criminal law shall not be followed—viz., remission, increase of punishment for second offence or one punishment for several offences.

*Article 104.*—Should the claim-holder not be an adult person or a person who is not allowed to control property, the fines laid down in these regulations shall be applicable to his legal representative. In the case of a person who is not an adult, should his capacities equal those of an adult this restriction shall not apply.

*Article 105.*—In case an agent, servant or other person employed in a mining enterprise shall in the course of his work violate these regulations, the holder of the mining enterprise rights may not plead that the violation does not originate with himself and thus be exempt from the punishment or fines imposed.

## CHAPTER X.—ANNEX.

*Article 106.*—These Regulations shall come into force on the day of their promulgation.

*Article 107.*—Within six months from the date of promulgation of these Regulations all mines which shall have already secured mining permits shall petition for registration under these regulations.

*Article 108.*—For six months from the date of promulgation of these Regulations all annual rent for mining areas and mineral production tax hitherto levied according to previous regulations

shall be payable in accordance with the old Regulations, and those which shall not have reached the half-year shall be accounted for by the month.

*Article 109.*—Previous to the enforcement of these regulations the collection of taxes upon minerals under Article 6, Class 3, was considered to be local taxation. This shall continue as heretofore, but in no case shall the tax exceed five per mille of the market value of the mineral.

*Article 110.*—The stipulations of these Regulations shall be applicable to Government mining enterprises, unless specially regulated.

*Article 111.*—All agreements under which foreign capital has been raised for mining enterprise entered into with foreigners before the enforcement of these Regulations, and sanctioned by Government Offices, shall continue to be binding as heretofore.



## AFFORESTATION LAW

(Promulgated on November 3rd, 1914)

*Translated and published by the Commission on Extraterritoriality, Peking.*

### CHAPTER I.—GENERAL.

*Article 1.*—The management and control of forests owned by the Government, the public, or private individuals, shall be in accordance with this Law, unless otherwise provided for in other laws and mandates.

*Article 2.*—Forests, which have not yet been owned by any person, and which should become property of the Government according to law, shall be classified as Government owned forests.

*Article 3.*—The Government owned forests, except those which have been under the direct control of the Ministry of Agriculture and Commerce may be entrusted to the local official organs for management.

*Article 4.*—All the Government owned forests shall be under the direct control of the Ministry of Agriculture and Commerce, if they are under any of the following conditions :

- (1) Those affecting the sources of rivers and streams.
- (2) Those which are situated between two or more provinces.
- (3) Those which are connected with diplomatic cases.

*Article 5.*—Should the Ministry of Agriculture and Commerce deem it necessary for the proper development of the Government owned forests, it may purchase any forest owned by the public or by any individual at an adequate price.

### CHAPTER II.—RESERVED FORESTS.

*Article 6.*—The Ministry of Agriculture and Commerce or the high administrative official of a local area may for any of the following reasons convert any forest, whether owned by the Government, the public or an individual, into a reserved forest :

- (1) Precaution against floods.
- (2) The maintenance of the source of the streams.
- (3) Public sanitation.
- (4) A mark for navigation.
- (5) A convenience for fishery enterprises.
- (6) A prevention of wind and sand.

*Article 7.*—When any public or private forest is converted into a reserved forest, a petition may be sent to the Ministry of Agriculture and Commerce claiming indemnity for the loss incurred.

*Article 8.*—The procedure for the management and control of the preserved forests, which have been entrusted by the Ministry of Agriculture and Commerce to the local officials, shall be fixed by Instructional Mandates of the President.

*Article 9.*—When, with regard to any forest which has been reserved, the Ministry of Agriculture and Commerce or a local high administrative official considers such reservation to be no longer necessary the order of preservation shall be cancelled.

**Article 10.**—No one without the permission of the local officials shall fell trees in a reserved forest and no combustible material may be brought into such forest.

**Article 11.**—Articles 7, 8 and 10 shall also apply to the forests hallowed by ancient traditions or renowned scenarios.

### CHAPTER III.—ENCOURAGEMENT.

**Article 12.**—If any individual or body of individuals desire to use any waste piece of Government mountain land for forest raising, permission may be granted without paying any price.

The above-mentioned applicant must be a citizen of the *Chung Hua Min Kuo*.

**Article 13.**—An area of Waste Government mountain and to be used for forest raising shall not exceed an area of 100 square *li*.

When an area of such mountain land has been completely developed, the applicant may petition for more.

**Article 14.**—The applicant for the Government waste mountain land shall deposit a cash security of from \$20 to \$100 for every ten square *li*, the amount of such security shall be fixed by the Ministry of Agriculture and Commerce or by the local chief administrative official.

If the area of the Government hill applied for is less than ten square *li*, it shall be reckoned as ten square *li*.

After a period of five years should the local controlling official find that the enterprise has been successful, he shall return the cash security to the applicant.

When the cash security is returned, interest thereon shall be paid, but the interest shall be not less than 3 per cent. and not more than 5 per cent.

**Article 15.**—If a year after a piece of Government waste mountain land has been granted without payment of price, no attempt has been made to work the same, such land shall revert to the Government and the cash security shall be forfeited. But this shall not apply in any case where the failure to develop is due to natural calamities, or other causes over which the applicant has no control, provided that the sanction of the local official has been obtained for the delay.

**Article 16.**—When Government waste mountain land is being used for reclamation, such mountain land shall be exempt from taxation for a period of between 5 and 30 years. The length of the period shall be fixed by the Ministry of Agriculture and Commerce or the local chief administrative official.

**Article 17.**—Regulations for the rewarding and encouragement of persons who have achieved success in the cultivation of forests shall be fixed by Instructional Mandates of the President.

### CHAPTER IV.—SUPERVISION.

**Article 18.**—For the benefit of the public, the local official may forbid or restrict the cultivation of forests owned by the public or individuals.

**Article 19.**—Should the owner of a public or private forest begin to fell trees not in conformity with the usual practice of forestry or should he neglect to cultivate the same, he may be restricted or warned by the proper controlling local official.

*Article 20.*—With regard to any waste mountain land owned by the public or by any individual, the controlling local official may fix a date before which the owner may be compelled to plant trees thereon.

#### CHAPTER V.—PUNISHMENT.

*Article 21.*—Any one who steals any produce of a forest shall be considered as thief, and may be sentenced to a limited imprisonment of the 5th grade with hard labour, or to a fine of a sum of money not exceeding double the value of the amount stolen.

*Article 22.*—Any forest thief, who has committed theft under any of the following circumstances, shall be punishable with a limited imprisonment of the fourth grade or lower and a fine not exceeding double the value of amount stolen :

- (1) Theft committed in a reserved forest.
- (2) Theft committed by a person who has been entrusted by any official or by any contract, with the responsibility of protecting the forest.

*Article 23.*—Any person, who accepts as a gift, or who transports, stores, purchases, or deals with as broker, any goods which he knows to have been stolen by forest thieves, shall be punishable in accordance with the provisions set forth in Articles 21 and 22.

*Article 24.*—Any one who sets fire to a forest of another shall be punishable in accordance with the provisions made in Article 188 of the Criminal Code.

*Article 25.*—Any one who sets fire to his own forest shall be punishable with a limited imprisonment of the 5th grade with hard labour, or with a fine not exceeding \$100. Should he injure the property of others by the incendiary fire on his own forest, he shall be punishable in accordance with the provisions set forth in Article 189 in the Criminal Code.

*Article 26.*—Should any person uses another's forest as pasture for his cattle or horses without previously obtaining the approval of the owner, he shall be fined a sum between \$1 and \$30.

*Article 27.*—Should any person damage or remove the marks used in a forest, etc., he shall be fined a sum between \$2 and \$50.

*Article 28.*—When a person injures the young trees of another person's forest, he shall be fined a sum between \$2 and \$100.

*Article 29.*—If any person should violate the provisions made in Article 10 by felling wood or bringing combustible materials into a forest he shall be fined a sum between \$1 and \$30.

*Article 30.*—If any person should violate the provisions made in Article 18 by working a reserved forest, he shall be fined a sum between \$2 and \$50.

#### CHAPTER VI.—BYE-LAWS.

*Article 31.*—The Detailed Regulations for the Law shall be fixed by Instructional Mandates of the President.

*Article 32.*—This Law shall come into force from the date of promulgation.



## TRADE MARK LAW

(Promulgated, May 3rd, 1923).

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**Article 1.**—A person who desires exclusively to use a trade mark in order to distinguish goods as having been produced, manufactured, worked, selected, sold and dealt with in his business, may have such trade mark registered in accordance with this Law.

A trade mark must consist of characters, devices, marks or a combination thereof, which have a specially distinctive appearance.

It is permissible to designate the colours which are to be applied to a trade mark.

**Article 2.**—Any of the following cannot be registered as a trade mark :

- (1) Devices which are identical with or similar to, the national flag, the national emblem, the military or naval flags, national or other official seals or Decorations for merit.
- (2) Devices which are identical with or similar to the badge of the Red Cross, the national or the military or naval flags of Foreign Nations.
- (3) Devices which may be prejudicious to public order or morals or may deceive the public.
- (4) Devices which are identical with or similar to marks generally used for identical goods.
- (5) Devices which are identical with or similar to a mark belonging to another person and generally known to the public and used for identical goods.
- (6) Devices which are identical with or similar to medals given by the Government, medals or diplomas awarded at an exposition or at any industrial exposition ; but this does not apply when a person who is the recipient of such medals or diplomas desires to use the same as a part of his trade mark.
- (7) Devices showing the likeness, the name or trade name of another person or the denomination of a juridical person or an association, unless such person or association has given permission.
- (8) Devices which are identical with or similar to a trade mark belonging to another person, in regard to which a year has not yet expired since the loss of the registration ; but this does not apply to a trade mark which, before the loss of its registration, has not been used for a year or more.

**Article 3.**—When two or more persons have a right to obtain separate registration for an identical or similar trade mark which is to be used for identical goods, only that person who first used such trade mark shall be granted registration ; but registration shall be granted to a person who shall first make application ; provided that no one of the other applicants has used such trade mark before

and provided that a former user cannot be established. If the applications are of the same date, the mutual agreement of the applicants shall govern; provided that if they do not agree, none of the trade marks shall be registered.

*Article 4.*—If a trade mark has been used in good faith for five years before the promulgation of this Law, the owner shall apply for registration within the space of six months after the promulgation, in which case the restriction laid down in clause 5 of Article 2 and in Article 3 are not applicable. But if the Bureau of Trade Marks deems it necessary, it may ask for revision or modification of the form or design of the mark.

*Article 5.*—A person's own trade marks which are to be used for identical goods and which are similar to each other, can be registered only if application is made by such person for their registration as associated trade marks.

*Article 6.*—A foreigner, who desires to avail himself of the advantage of the provisions laid down in the treaty for the mutual protection of trade marks and who desires to have the exclusive use of his trade mark, may apply for registration of a trade mark in accordance with the provisions of this Law.

*Article 7.*—The right arising from an application for the registration of a trade mark can be transferred only together with the business to which it belongs.

Succession to a right as mentioned in the foregoing paragraph cannot be set up against third persons, unless the change in the name of the applicant has been notified.

*Article 8.*—A person, who has no fixed residence or office in China, shall not be allowed to apply for the registration of a trade mark, unless he appoints a representative, whose residence or office is located in China or to take any other procedures relating to them, or exercise the right of a trade mark or any other privileges appertaining thereto.

The representative mentioned above, unless specifically authorized, shall represent his principal in any procedure taken in accordance with the provisions of this Law or of any Regulations as well as in any actions relating to trade marks.

*Article 9.*—If the appointment or the change of a representative mentioned in paragraph 2 of the foregoing Article or the withdrawal of the authority of such representative is not registered and the approval of the Bureau of Trade Marks has not been obtained, there shall be no legal claim against third persons.

*Article 10.*—When the Bureau of Trade Marks considers that a representative for a trade mark is not fit as such, the Bureau may direct that another representative be appointed.

When an order to change a representative has been made, any action of such representative relative to the Bureau of Trade Marks may be declared invalid.

*Article 11.*—For the sake of a person residing in a foreign country or at a distant place or at a place where communications are inconvenient the Bureau of Trade Marks may, by virtue of its authority or on application extend the legal period within which any procedure in relation to the Bureau of Trade Marks should be taken.

**Article 12.**—When a person who has made an application or entered on any other procedure with regard to a trade mark has failed to act within the legal or fixed period, the application or other process may be declared invalid, but this does not apply if proper cause is shown and is considered unavoidable.

**Article 13.**—If a person requires a certificate relating to a trade mark or a drawing, or desires to inspect or to copy a document, he shall apply to the Bureau of Trade Marks and state his reasons for such application ; the Bureau of Trade Marks shall not refuse the request unless it considers that the matter should be kept secret.

**Article 14.**—The right of the exclusive use of a trade mark is obtained by an applicant from the day when it is registered.

The owner of a trade mark shall use such mark only in relation to the goods designated at the time of application.

**Article 15.**—A person's right to a trade mark shall not preclude any other person from indicating goods in the ordinary course of business by using his own name or trade name, the place of production, the quality, the nature or the utility of the goods, but this shall not apply if such other person uses an identical name or trade name in bad faith.

**Article 16.**—The period of duration of the exclusive use of a trade mark is twenty years from the day when the registration is made.

In the case of a trade mark which has been registered as a foreign registered trade mark, the period of duration of its exclusive use, in conformity with the provisions in Article 6, may be the same as fixed in the principal country ; but in no case can the period of duration exceed twenty years.

*Application* may be made to extend the periods mentioned in the foregoing two paragraphs ; but, again, such extension shall not exceed an addition of twenty years.

**Article 17.**—A trade mark right can be transferred to another person together with the business ; and it may be separated from the goods for which the trade mark was used, and transferred ; but a right to use an associated trade mark cannot be transferred separately.

**Article 18.**—The transfer of a right for the exclusive use of a trade mark cannot be set up against third persons, unless such transfer is registered and the approval of the Bureau of Trade Marks obtained. It shall be the same in the case of a mortgagee.

**Article 19.**—The right for the exclusive use of a trade mark may be cancelled upon the application of the owner ; and in the following cases the Bureau of Trade Marks may, by virtue of its authority or at the request of a person interested, cancel the registration of a trade mark :

- (1) If a person possessing a trade mark right alters or adds to the registered trade mark for the purpose of simulating another mark.
- (2) If, without proper reason, a person possessing a trade mark right does not use it for a year after its registration, or discontinues its use for two years in China.



- (3) If in the case of a transfer of a trade mark right, except by inheritance, application for the registration of such transfer is not made within a year.

The provisions of No. (2) of the foregoing paragraph do not apply, if one of the associated trade marks has been used, or if a trade mark registered as a foreign registered trade mark has been used or has not yet ceased to be used in the foreign country.

When a trade mark right is to be cancelled in accordance with the provisions of paragraph 1 of this Article, the Bureau of Trade Marks shall give sixty days notice to the owner of the trade mark right or his representative.

If a person is dissatisfied with the order issued against him in accordance with the provisions of paragraph 1 of this Article, he may lodge a protest with the Ministry of Agriculture and Commerce.

*Article 20.*—If a person having a trade mark right discontinues his business, his trade mark right is then extinguished.

*Article 21.*—If the registration of a trade mark or the extension of the period of the exclusive use of a trade mark is contrary to the provisions of Articles 1 to 5, and Article 6, paragraph (2), it shall, after a hearing, be declared invalid.

*Article 22.*—A Trade Mark Registration Book shall be kept at the Bureau of Trade Marks in which shall be registered all matter relative to the right of the exclusive use of a trade mark and all other facts as provided by law or regulations.

All the trade marks approved and granted shall be recorded in this Registration Book, and certificates shall be issued to the owners of these trade marks.

*Article 23.*—The Bureau of Trade Marks shall publish a "Trade Mark Gazette" and enter therein all registered trade marks and any necessary facts relating thereto.

*Article 24.*—With regard to a registration of a trade mark or an extension of the period of the exclusive use of a trade mark, the applicant shall when application is made pay a fee for registration; but the fee may be refunded when an application is rejected by the Bureau of Trade Marks.

*Article 25.*—When a person applies for the registration of a trade mark, he shall designate, in the schedule of classified goods, the goods for which the trade mark is to be used.

The classification of goods mentioned in the foregoing paragraph shall be determined by the Detailed Regulations.

*Article 26.*—When there is an application to the Bureau of Trade Marks for the registration of a trade mark or for the extension of a period of the exclusive use of the trade mark, an Examiner shall be appointed to give a decision.

When the Bureau of Trade Marks is satisfied that the application is in order, it shall inform the applicant of the result of the examination and publish the same in the "Trade Mark Gazette." If no protest shall have been made within six months or if satisfactory explanations have been given in reply to such protest, a decision shall be made to grant the registration.

**Article 27.**—In case an applicant is dissatisfied with a decision refusing registration, he may send in another application stating his reasons and ask for a re-examination.

Should the applicant be dissatisfied with the second decision, he may lodge an appeal with the Ministry of Agriculture and Commerce.

**Article 28.**—Any person concerned may request a hearing with regard to any of the following matters :

- (1) Invalidity of registration according to the provisions of Article 21.
- (2) Determination of the limits of a right of the exclusive use of a trade mark.

An Examiner may ask for a hearing for the invalidation of a trade mark which is in contravention of the provisions of Article 1 or Article 2, Nos. 1 to 6. But when a registration of a trade mark is in contravention of Article 2, No. 7 or 8, Articles 3 to 5, if three years have elapsed since the day when an entry in the "Trade Mark Gazette" was effected no request for a hearing shall be granted.

**Article 29.**—A request for a hearing shall be made to the Bureau of Trade Marks in writing. In a hearing, the documents of persons concerned shall be duplicated and served upon the opponent, in order that such opponent may be directed within the period allowed to present a rejoinder to the document presented by the other party ; or an inquiry in writing may be forwarded to a party, and the latter may be directed to present a written opinion thereon.

**Article 30.**—A hearing is conducted by three trade mark judges consulting together, a majority vote being decisive.

Trade mark judges shall, for each case, be designated by the Director of the Bureau of Trade Marks.

A trade mark judge must withdraw from a hearing if he is interested in the matter, or if he has already taken any part with regard to the matter before the trade mark judges.

**Article 31.**—A decision in a hearing shall be given upon the documents of the case ; but, if necessary, a time shall be fixed to conduct an oral inquiry.

If any party to a hearing fails to observe the legal or fixed period of time, the hearing shall not be suspended.

**Article 32.**—A person who is interested in the matter of a hearing may, before such hearing comes to an end, apply to intervene. Whether or not this intervention shall be allowed shall be decided after the examination of the parties and the consultation of the trade mark judges have been concluded.

If the act of a person intervening in a hearing conflicts with the act of the party he purports to assist, the intervention shall have no effect.

**Article 33.**—A person who is dissatisfied with the decision in a hearing may, within thirty days from the date when such decision has been served upon him, demand a re-hearing of the matter. The provisions governing hearing shall apply to a rehearing.

**Article 34.**—If a petitioner is dissatisfied with the decision in a rehearing, he may, in conformity with the rules of law, within sixty days, appeal to the Ministry of Agriculture and Commerce.

Further, if the petitioner is dissatisfied with the decision in the appeal and considers such decision to be contrary to the Laws and Regulations in force, he may bring an action in conformity with the rules of law before the Administrative Court.

*Article 35.*—When a decision in a hearing in the matter of a trade mark has been given, no person whatsoever shall be permitted to ask for another hearing on the same facts and evidence.

*Article 36.*—No proceedings in a civil or criminal action with regard to a right for the exclusive use of a trade mark shall be instituted until the decision in the hearing has been definitely given.

*Article 37.*—A person desiring to have the exclusive use of a mark which is used for goods in a business whose object is not for profit may apply for its registration according to this Law.

The provisions relating to trade marks apply to the marks referred to in the foregoing paragraph.

*Article 38.*—The fee required for the registration of a trade mark or for any other expense in connection with the registration shall be fixed in the Detailed Regulations.

*Article 39.*—A person who comes within any of the following descriptions shall be punished by penal servitude for not more than one year or by a fine of not more than five hundred dollars, and his articles shall be confiscated :

- (1) A person who uses for identical goods the registered trade mark of another person, who uses vessels or wrappings, etc. bearing such trade mark, or who sells and delivers such goods.
- (2) A person who delivers or sells the registered trade mark of another person or vessels or wrappings, etc. bearing such trade mark with the intention to let others use them for identical goods.
- (3) A person who counterfeits or imitates the registered trade mark of another person with the intention to use it or to let others use it for identical goods.
- (4) A person who uses a counterfeited or imitated trade mark for identical goods or who delivers or sells such trade mark with intention to let others use it for identical goods.
- (5) A person who delivers or sells identical goods for which a counterfeited or imitated trade mark has been used.
- (6) A person who delivers or sells goods for which a trade mark identical with or similar to, registered trade mark of another person is used, or who imports such goods from foreign countries with the intention to deliver or sell them.
- (7) A person who in advertisements, signboards, notes, bills or other commercial papers which are used in business, makes use for identical goods of a trade mark identical with or similar to, a registered trade mark of another person.

The provisions of Nos. 1, 2, 5 and 6 of this Article, with regard to the offences of delivering or selling of such things as mentioned therein, are also applicable to a person who has kept them in his possession with intention to deliver or sell them.

The offences mentioned in paragraph 1 of this Article are prosecuted on complaint.



**Article 40.**—Any person who comes within any of the following description shall be punished by penal servitude for not more than six months or by a fine of not more than two hundred dollars :

- (1) A person who has obtained a trade mark right by a fraudulent act.
- (2) A person who uses a non-registered trade mark for goods representing that such mark has been registered, or who delivers or sells such goods or who has kept them in his possession with the intention to deliver or sell them.
- (3) A person who uses a non-registered trade mark in an advertisement, or on a signboard, note, bill or other commercial paper which is used in business representing that such mark has been registered.

**Article 41.**—If in relation to an article which is subject to confiscation for any of the offences mentioned in Article 39, the party injured makes an application before judgment by the court is given, a fair price shall be fixed and it shall be directed in the judgment that such article be delivered to the party injured.

If the loss suffered exceeds the price fixed for the article delivered, the party injured can claim compensation for the difference.

**Article 42.**—If a witness, an expert or an interpreter makes a false statement before the Bureau of Trade Marks or before any judicial or other government authority requested to act by the Bureau of Trade Marks, he shall be punished by penal servitude for not more than six months or by a fine of not more than two hundred dollars.

If a person who has committed the offence mentioned in the foregoing paragraph, confesses his offence to the proper authority before a decision by an Examiner, or a decision in a hearing has been given in the matter, his penalty may be reduced or remitted.

**Article 43.**—In case of the violation of the provisions of Articles 39 to 42 by any foreigner, the trial of the case and the execution of the judgment in the matters of punishment and indemnity shall be carried into effect in accordance with the provisions of the Treaties now in force.

**Article 44.**—This Law shall take effect from the day of promulgation.

## DETAILED REGULATIONS OF THE TRADE MARK LAW

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**Article 1.**—In applying for the registration of a trade mark, an application is to be submitted specifying the kinds of goods as enumerated in Article 36 of these Detailed Regulations and five copies of the device of the trade mark together with the die, stamp or stencil are to be enclosed, but the latter may be separately sent in within a period of 60 days after the submission of the application.

**Article 2.**—When colour is used in the printing of a trade mark, the applicant is required to enclose in his application a sample of the printed coloured trade mark.

**Article 3.**—The device of a trade mark is to be drawn on a clean and strong piece of paper with ink. The length and breadth of the paper is not to exceed five inches (or 16 cm.) of the newly adopted standard of length measurement.

**Article 4.**—A die, stamp or stencil shall be made of wood, metal or other movable types which must be suitable for printing purposes. The length and breadth of such a die, stamp or stencil is not to exceed four inches of the new measurement (or 12.8 cm.) and its thickness is not to exceed eight-tenth of an inch of the new measurement (or 2.56 cm.).

**Article 5.**—When necessary the Bureau of Trade Marks may instruct the applicant for registration of a trade mark to submit explanations of the devices or symbols he employs for his trade mark and may require a sample of his trade mark.

**Article 6.**—When any one applies for the registration of a trade mark as allowed in Clauses 6 to 8 of Article 2 of the Trade Mark Law, he must prove that the application is in accordance with the provisions laid down in the Clauses, and state the fact that the application for registration is approved by Law.

**Article 7.**—In case of a person applying for the registration of his trade mark in accordance with Article 3 of the Trade Mark Law, such trade mark having been in use before the application, he may supply the details and the date on which it was introduced for use.

**Article 8.**—In case it is necessary that several applicants shall hold a conference as provided for in Article 3 of the Trade Mark Law, the Bureau of Trade Marks shall designate a suitable time for the parties concerned to meet, and shall instruct them to submit the result of their consultation.

If at the designated time no conference is held nor reports submitted, the case is considered unsettled.

**Article 9.**—In case an application is made for the registration of trade mark similar to that already registered so as to form an associated trade mark, the applicant shall also submit for examination the certificate of registration of his first trade mark.

After the registration of the above trade mark, the Bureau of Trades Marks shall inset the number of the additional trade mark

on the original certificate, which after being stamped with the official seal, shall be returned to the applicant.

*Article 10.*—In succeeding to the rights and privileges of a trade mark in accordance with the provisions of Article 7 Section 2 of the Trade Mark Law, the application for the transfer of the registration shall be countersigned by the original owner, and the documents proving the legal transfer of the business concerned shall also be submitted.

*Article 11.*—When an application is filed for the change of a representative as provided for in Article 10 Section 1 of the Trade Mark Law, the original representative shall be duly informed.

*Article 12.*—In connection with the registration for the extension of the term for the exclusive use of a trade mark, an application must be submitted within the period of three months before the expiration of the term of the trade mark and the original certificate shall also be submitted for reference.

Although no application has been submitted after the expiration of the above period, the owner of a trade mark may still apply for the extension of the term of his trade mark by paying an extra sum of money as required.

*Article 13.*—When an application is submitted for the transfer of the right of the exclusive use of a trade mark, the applicant must submit the document or documents giving evidence of the business concerned.

*Article 14.*—When the right of the exclusive use of a trade mark is transferred by inheritance, the applicant must submit the original certificate as the document or documents showing the legal inheritance of the applicant.

*Article 15.*—In case the right of the exclusive use of a trade mark is transferred by goodwill or on account of any other reason, the applicant must obtain the counter-signature of the party concerned, and must enclose the original document or documents furnishing evidence of the transference.

*Article 16.*—In case an application for registration of a separate transfer of the exclusive right of trade mark is made, the applicant for registration must specify the class of goods to which he intends to apply the transferred trade mark.

*Article 17.*—In case a person applies for registration of the transference of the right of the exclusive use of part of his associated trade marks, he must at the same time apply for registration of the other part of his associated trade marks.

*Article 18.*—In case it is necessary to cancel the right of the exclusive use of a trade mark on account of the suspension of business, only the person whose name is registered as owner of the trade mark shall have the right to apply for cancellation.

In case an application is made for cancellation of a part of the exclusive right of trade marks obtained after registration, the applicant must state the kinds of goods, of which the business has been suspended.

*Article 19.*—The forms, which have been provided for the use of the registration of a trade mark and other procedures, should be used by the applicants.



**Article 20.**—When a representative submits an application for his principal in connection with the use of or any other dealing with a trade mark, he must also submit a document showing the authorization of his representation. This does not include the case when he acts as representative for any juristic person and uses the name of the latter in the application.

**Article 21.**—In case a foreigner submits an application in connection with a trade mark or other dealing concerning a trade mark, he must submit a document showing his nationality, and written evidence proving that he possesses a business office pursuing commercial or industrial enterprise in China. If the applicant is a foreign juristic person, document or documents supporting the fact must be produced.

**Article 22.**—In case the written evidence showing nationality, or any other document of a representative is in a foreign language, a translation in Chinese must be submitted.

All applications, letters and document in connection with a trade mark are to be submitted in duplicate when there are opponents or others involved in the case.

**Article 23.**—When an application for registration of a trade mark or for any other dealing connected with a trade mark is in conflict with the procedure or forms as provided by the Provisions of the Trade Mark Law or its Detailed Regulations, or when the applicant has not paid the registration fees as required by law or when the application, device, die, stamp or stencil is not clear enough, the Bureau of Trade Marks may ask the applicant to make the alterations or corrections required.

**Article 24.**—The various periods of time fixed by these Detailed Regulations, or the dates and periods fixed by these Detailed Regulations and the Trade Mark Law, may be altered by the Bureau of Trade Marks at its own discretion or at the request of an applicant.

In applying for a change of dates and periods when there are opponents or other persons involved in the case, the approval of the person or persons concerned must first be obtained, or the reasons for the necessity of the change must be clearly stated, otherwise no sanction shall be given.

**Article 25.**—When an application is submitted in accordance with provisions of Article 12 of the Trade Mark Law, the applicant must state clearly the cause of the delay in following the regular procedure and also the date on which the cause arose.

In making the above application, the applicant must make up whatever is wanting because of such delay.

**Article 26.**—When the name, trade name, office or seal of the applicant or his representative is altered, notice must be immediately given to the Bureau of Trade Marks. This also includes the case when a person who has no office changes his residence or business residence, or when a person holding the right of the exclusive use of a trade mark changes the form or device of his seal.

In applying for registration of the change of name or seal, the applicant must enclose his certificate.

**Article 27.**—When an application is submitted in connection with a trade mark, it is necessary that the name of the trade mark, and the name of the owner of the trade mark be inserted in all the

documents. When a trade mark has already been registered, the registration number must also be quoted.

*Article 28.*—All applications, letters and enclosures submitted to the Bureau of Trade Marks shall have legal effect from the date of their receipt by the Bureau.

*Article 29.*—The results of an examination or the resolutions after a hearing passed by the Bureau of Trade Marks, or any other written matters shall be sent to the applicants and the persons concerned.

When a letter of information or any other document have failed to find their destination, the Bureau of Trade Marks shall publish the same in the "Trade Mark Gazette." After a period of thirty days after the publication of such letters or documents, the Bureau shall consider them as having reached the addresses concerned.

When the appointment of a representative has not yet been registered in the Bureau of Trade Marks, the delivery of letters or documents shall be considered to have reached its destination from the day on which such letters or documents were posted.

*Article 30.*—When in submitting proofs of the trade marks and other articles for examination the applicant has stated the necessity of having them returned after being dealt with, he must apply for the return within sixty days after the case is settled.

*Article 31.*—When the Bureau of Trade Marks makes copies of documents, the officials in charge must add to these copies the words "no difference between this and the original copy" and sign their names under this indorsement.

*Article 32.*—A fixed form must be used for the issue of a Certificate proving the registration of a trade mark. The device of the trade mark must be attached to the Certificate, which after being stamped with the Seal of the Bureau of Trade Marks shall be sent to the applicant.

*Article 33.*—In case of the loss or destruction of a trade mark Certificate, the person holding the right of the exclusive use of the trade mark may apply for a duplicate by stating the cause of the loss or destruction, and producing evidence in support of his statement.

When a new Certificate is obtained by following the above-mentioned procedure, a statement shall be inserted in the "Trade Mark Gazette" announcing the cancellation of the original copy of the Certificate.

When the right of the exclusive use of a trade mark is withdrawn or cancelled on account of a decision made by the Bureau of Trade Marks or a judgment rendered by a Law Court, or on account of any other reason the holder of a trade mark Certificate shall be instructed to return to the Bureau of Trade Marks the Certificate. A statement shall be inserted in the "Trade Mark Gazette" announcing the cancellation.

*Article 34.*—The fees for the various kinds of regulations in connection with a trade mark are fixed as follows :

- (1) A sum of \$40 is required for the exclusive use of the trade mark, or for the extension of the term of the exclusive use of the trade mark.

- (2) There are two kinds of transference of the exclusive use of a trade mark, and their respective fees are as follows :
  - (a) A sum of \$10 is required for transference by inheritance.
  - (b) A sum of \$20 is required for transference on account of goodwill or on account of any other reason.
- (3) A sum of \$2 is required for changes in registration or for making necessary alterations.

In the case of associated trade marks, only half of the charges mentioned above is required for registration.

*Article 35.*—The following fixed amounts of fees are required for submitting various applications in connection with a trade mark as provided for in the Trade Mark Law or in other Laws and Regulations relating to trade marks :

- (1) A sum of \$5 is required for any application for the registration of a trade mark.
- (2) A sum of \$5 is required on the application for the change of the name of the original applicant.
- (3) A sum of \$3 is required for the application for the supplying of a duplicate copy of a trade mark certificate.
- (4) A sum of \$5 is required for the application for registration of the extension of the exclusive use of a trade mark.
- (5) A sum of \$10 is required for the application for the extension of the term of the exclusive use of a trade mark when the fixed period before the expiration of the original term is expired.
- (6) A sum of \$5 is required for the application for cancellation of another person's registration.
- (7) A sum of \$1 is required for the application for the issue of an additional certificate.
- (8) A sum of \$1 to \$20 is required for the application for the supply of a copy of a plan or device for a trade mark.
- (9) A sum of \$0.20 is required for every hundred characters or less when the applicant asks for a copy of a document connected with a trade mark.
- (10) A sum of \$0.20 is required for the inspection of any document.
- (11) A sum of \$2 is required for an application for re-examination.
- (12) A sum of \$5 is required for an application for a hearing or a re-hearing.
- (13) A sum of \$5 is required for an application for participation in a hearing or a re-hearing.

In connection with the provisions of (1) (2) and (4), the holder of associate trade marks shall only pay one half of the charges required.

*Article 36.*—The applicant for the registration of a trade mark must in accordance with the following specifications state definitely the class of goods to which the trade mark is to be applied. When he is in doubt as to which of the following classes his goods belong, the Bureau of Trade Marks shall designate it for him :

- (1) Chemical supplies, medical material, medicine and medical instruments, rubber, sulphur, lime, mineral water



- and salt, including all kinds of medicines, pills, powders, ointment, medicine balls, dressings and bandages, sponges, etc.
- (2) Dyes, oils and other materials used for varnishing or colouring.
  - (3) Aromatic materials. Perfumes and other toilet preparations not belonging to any other class.
  - (4) Soap.
  - (5) Brushes and other oleaginous materials not belonging to any other class. This includes tooth powder and liquids used for washing and cleaning purposes.
  - (6) Coarse articles manufactured from metal not belonging to any other class. This includes wires and plates made from metals, silver, nickel, quick-silver, etc.
  - (7) Articles manufactured from metals which do not belong to any other class. This includes those which are melted, cast, carved, cut, pressed, etc., for decorations.
  - (8) Steel articles with sharp edges, including needles, nails, knives, etc.
  - (9) Articles made of precious metal, or their imitations, including those made of lead and nickel, not belonging to any other class. This includes all gilded articles made of metal.
  - (10) Pearls, jade and precious stones, their imitations, or articles made of them not belonging to any other class of goods.
  - (11) All kinds of minerals.
  - (12) All kinds of stones, their imitations, or articles made of them not belonging to any other class of goods.
  - (13) Lime, clay, sand and concrete (including cement, etc.).
  - (14) Pottery, porcelain, earthenware, bricks, tiles, etc.
  - (15) Glass, glassware, and cloisssonne articles not belonging to any other class. This includes enameled and "Ching-tailan" articles.
  - (16) India rubber and articles made out of it.
  - (17) Machines, implements and other articles which do not belong to any other class. This includes boilers, galvanic batteries, wind or hydraulic machines, sewing machines, printing machines and fire engines.
  - (18) Machines, instruments and other things used in chemistry medical science, surveying and measurements, education, etc. Under this head are : Telegraph, telephone, chemical and surgical instruments, phonographs, optical glasses, and calculating machines, etc.
  - (19) Agricultural implements.
  - (20) Machines and instruments, etc. used for the purpose of transportation.
  - (21) Clocks, watches and their accessories.
  - (22) Musical instruments.
  - (23) Fire arms used for military purposes, guns used in hunting, fireworks, and all kinds of explosives.
  - (24) Silkworm eggs and cocoons.
  - (25) Cotton, flax, hemp, feathers and coarse articles made of them.

- (26) Raw silk.
- (27) Yarn.
- (28) Woollen thread.
- (29) Flax and silk yarns which do not belong to any of the preceding three classes.
- (30) Articles woven out of silk thread.
- (31) Articles woven out of yarn.
- (32) Articles woven out of woollen thread.
- (33) Articles woven out of flax thread.
- (34) Other textiles which do not come within the category of the preceding four classes.
- (35) Silk embroideries, knitted articles, ribbons, etc., not belonging to any other class.
- (36) Hats, clothes, collars, cuffs, handkerchiefs, buttons, and other articles pertaining to dress.
- (37) Bedsteads and household furniture which do not belong to any other class.
- (38) All kinds of wines and spirits and products for causing fermentation.
- (39) Ice, aerated water, fruit juice and other cooling drinks.
- (40) Sauces, condiments and vinegar.
- (41) Sugar and honey.
- (42) Tea and coffee.
- (43) Cakes and bread.
- (44) All eatables which do not belong to any other class of goods. Baked, preserved, salted and dried eatables and tinned fruits and meats.
- (45) Milk of animals, and things made of it, or its imitations.
- (46) Seeds of fruits, grains, vegetables, etc. seed powders and things made of them. This includes beancurd, etc.
- (47) Tobacco leaves.
- (48) Tobacco pipes and pouches.
- (49) Paper and articles made of it. This includes letter holders, files and paper for burning purposes.
- (50) Stationery.
- (51) Leather and hides which do not belong to any other class. This includes hides and skins.
- (52) Fuels.
- (53) Matches.
- (54) Oil and wax.
- (55) Fertilizers.
- (56) Wood and bamboo.
- (57) Articles made of bamboo, wood, rattan, etc., which do not belong to any other class and articles which are varnished and painted.
- (58) Articles made of bone, horn, ivory and shell which do not belong to any other class and their imitations.
- (59) Straw and straw articles which do not belong to any other class. This includes ropes, baskets, mattings and straw hats, etc.
- (60) Umbrellas, fans, walking sticks, boots, shoes, etc.
- (61) Lamps and other instruments for lighting.
- (62) Brushes, etc.

(63) Toys and playthings.

(64) Maps, pictures, photos, books, newspapers and magazines.

(65) All other articles which do not belong to any of the above classes.

*Article 37.*—These Regulations shall come into force from the day of promulgation.



# LAW OF COPYRIGHT

(Promulgated on November 7th, 1915)

*Translated and published by the Commission on Extraterritoriality, Peking.*

## CHAPTER I.—GENERAL

**Article 1.**—Copyright is the exclusive right given for the reproduction of any of the following classes of writings registered in accordance with the provisions made in this Law :

- (a) Books, lectures, and records ;
- (b) Musical compositions and dramas ;
- (c) Drawings and handwritings ;
- (d) Photographs, engravings and blocks ;
- (e) All other writings connected with education and the fine arts.

**Article 2.**—The registration of copyright for all classes of writings shall be made in the Ministry of the Interior and the procedure of registration and the fees therefore shall be fixed separately by instructional mandates.

**Article 3.**—The copyright is transferable to other persons by the original owner.

## CHAPTER II.—RIGHTS OF AN AUTHOR

**Article 4.**—The copyright shall be enjoyed by an author for life ; and after his death his heir or successor shall enjoy it for thirty years.

**Article 5.**—If the copyright of any writing is shared by several co-authors, it shall be enjoyed by the several persons concerned for life ; and after their death it shall be enjoyed by their respective heirs or successors for thirty years.

**Article 6.**—If any work is published posthumously, the heir or successor of its author shall enjoy the copyright for thirty years.

**Article 7.**—The copyright of any book or books published by a Government office, school, company, public institution, temple or society shall be enjoyed by such Government office, school, company, public institution, temple or society for thirty years.

**Article 8.**—The copyright of any writing published anonymously or pseudonymously shall be enjoyed by its author for thirty years ; but if the author changes the pseudonym into his real name before the end of that period, the provisions made in Article 4 shall apply.

**Article 9.**—The copyright of photographs can be enjoyed for ten years ; but photographs published in the body of books are not included in this provision.

**Article 10.**—The copyright of translations of books written in foreign languages shall be enjoyed by the translators on the same terms as set forth in Article 4 ; but such translators have no right to prevent others from translating the same books from the original language, excepting when the translations of others are more or less identical in phraseology with those of the original translators.

*Article 11.*—The enjoyment of a copyright commences from the date of registration of a book.

*Article 12.*—The copyright of the heir or successor of an author referred to in Article 4 shall commence from the year following the death of the author ; and the copyright of the heir or successor referred to in Article 5 shall commence from the year following the death of the last of the co-authors.

*Article 12.*—With regard to books for publication periodically or in instalments particulars should be stated at the time of registration of such books ; and thenceforth reports should be submitted to the authorities at each subsequent publication.

*Article 14.*—The copyright of books published periodically shall commence from the date on which each portion of such books is registered ; and with regard to books published in instalments the copyright shall commence from the date of registration of the last instalment. In the event of the publication of a book being not completed and the last instalment being not published after three years have elapsed since the registration of the previous instalment, the portion or instalment latest registered shall be considered as the last portion of the book. If the date of publication of each instalment of such book is previously stated at the registration of the first instalment of the book, this Article shall not apply.

*Article 15.*—In the event of an author leaving no heir or successor after his death, his copyright shall be cancelled.

*Article 16.*—The transfer or the inheritance of a copyright shall be duly registered.

*Article 17.*—If alterations or rearrangements of chapters are made or if illustrations or pictures are inserted upon the re-edition of a book whose copyright has been registered, a sample copy of the new edition of such book should be submitted to the office where the first edition is registered.

*Article 18.*—In the event of one of several co-authors of a work refusing to publish the work, such portions as are written by him should be taken out from the book to be used at his discretion ; but in case such a book does not admit of part of its contents being taken out, adequate compensation should be given to the person refusing to publish his portion of the work and the copyright shall be enjoyed by the publishers. The compensated party may, if he desires, refuse to allow his name to appear on a work so published.

*Article 19.*—The copyright of a book compiled in conformity with this Law from the writings of several authors shall be enjoyed by the compiler in accordance with Article 4. Books formed by plagiarizing the writings of others are not included in this connexion.

*Article 20.*—In case any one remunerates persons for the writing of a book or the executing of a photograph, the copyright of such book or photograph shall be enjoyed by the party paying the remuneration.

*Article 21.*—The copyright of lectures or addresses, whether already recorded by others or published by the Government offices or educational institutions in which they were originally delivered, shall be enjoyed by the lecturers. Where the publication of such lectures or addresses is in accordance with agreements or where the publication is approved of by the lecturer this Article shall not apply.

**Article 22.**—Persons who throw new light on works written by others as a result of their research work, or who manufacture articles of fine art not similar in design to those of others shall be considered as authors and shall enjoy copyright for the articles manufactured or the recorded results of their researches.

**Article 23.**—The following classes of writings shall enjoy no copyright :

- (a) Laws, mandates, treaties, dispatches and official documents;
- (b) Sermons and tracts of philanthropic institutions ;
- (c) Newspaper articles and reports dealing with politics and current news ;
- (d) Addresses delivered at public meetings.

**Article 24.**—No copyright shall be enjoyed for books the publication of which is prohibited by the Law of Publications.

### CHAPTER III.—INFRINGEMENT OF COPYRIGHT

**Article 25.**—After the copyright of a book has been registered, any one trying to reproduce or pirate the book or use any other improper methods to infringe the rights and privileges of the author shall be liable to prosecution.

**Article 26.**—Unless the transfer or mortgage of a copyright is duly registered, no action can be brought against a third party for infringement.

**Article 27.**—The transferee or mortgagee of a copyright is not allowed to delete passages or obliterate or change the name of the original author of a book or change or alter the name of the book itself for the purpose of publication. Where sanction has been obtained from the author or where the changes, etc., are effected in obedience to the will of a deceased author this Article shall not apply.

**Article 28.**—Any book the period of whose copyright has expired is to be considered as public property ; but in no case shall any one be allowed to delete passages from such a book, obliterate or change the name of the author or of the book itself for the purpose of publication.

**Article 29.**—The publication of one's own writings under the name of another is to be considered as equivalent to a case of forgery.

**Article 30.**—No person is allowed to utilize as the security for a loan the unpublished writing of an author ; but where the permission of the author has been obtained this Article shall not apply.

**Article 31.**—The following kinds of writings shall not be considered as pirated works :

- (a) Compilations of summaries or selections from the writings of several authors for use as textbooks or books of reference ;
- (b) Quotations from other authors for the purpose of elucidating or corroborating certain points in one's own writings ;
- (c) The production of engravings from the drawings of others, or *vice versa*.

With regard to clause (a) and (b) acknowledgement should be made of the sources from which the passages are quoted.

**Article 32.**—In a case of infringement of copyright brought about by the author of a book, the prosecuted party, besides being



liable to the penalties provided for in this Law, shall be required to make good to the injured party any loss that may have been suffered.

*Article 33.*—In the event of a book being the product of several co-authors can bring about a suit of prosecution of infringement of copyright against an offender to recover his own share of the damage suffered without awaiting the sanction of the other co-authors.

*Article 34.*—During the progress of a civil or criminal case in connexion with the infringement of copyright of a book the author may request the Court of Justice temporarily to prohibit the sale of the pirated book. If by the decision of the Court of Justice it is proved that the book in question has not been pirated, any losses suffered by the defendant in such a case through the temporary suspension of the sale of the book shall be made good by the plaintiff.

*Article 35.*—If the infringement of copyright of a book is, in the opinion of a Court of Justice, unintentional, no fines or penalty may be inflicted, but any profits made by the defendant through such unintentional infringement of copyright should be refunded to the plaintiff.

#### CHAPTER IV.—PENALTY

*Article 36.*—In a case of reproduction, imitation or piracy of the writings of others the offender shall be liable to a fine between \$50 and \$500. Persons undertaking the sale of such books with the knowledge of such an offence shall be subject to the same penalty.

*Article 37.*—Any person violating any provision of Articles 27 and 30 is liable to a fine between \$40 and \$400.

*Article 38.*—Any person violating any provision of Article 28 and of clause (b) of Article 31 is liable to a fine between \$30 and \$300.

*Article 39.*—If false statements are made at the time of registration or the provisions of Article 17 are not followed, beside the cancellation of the copyright, a fine between \$20 and \$200 shall be imposed.

*Article 40.*—If a false date of registration is recorded at the end of a book which has not been registered, a fine between \$10 and \$100 shall be imposed.

*Article 41.*—All books, for which fines have been imposed in accordance with this Law, shall be confiscated.

*Article 42.*—The violation of copyright referred to in Articles 36-37 shall not be considered unless an action has been brought by the injured party, but this does not apply to the violation of Article 27 after the death of the original author.

*Article 43.*—Prosecution of infringement of copyright in accordance with this Law shall be brought about not later than two years after registration.

#### CHAPTER V.—APPENDIX

*Article 44.*—This Law shall have effect from the date of promulgation.

*Article 45.*—Books registered previous to the enforcement of this Law shall enjoy protection from the date of promulgation.

## **SPECIAL CRIMINAL CODE REGARDING BANDITS**

**(November 27th, 3rd year of the Republic, 1914)**

**Amendment of Section 2 of Article 11, November 27th, 8th year  
of the Republic (1919);**

**Sanctioned by Presidential Mandate, February 28th, 12th  
year of the Republic (1923).**

*Article 1.*—Any one committing any crime under this Code shall be punished according to the stipulations of this Code.

Any one committing a robbery shall be punished according to the Provisional Criminal Code. Any one committing any crime in violation of Article 4 of this Code shall be regarded as a robber.

*Article 2.*—Any one who commits a crime in violation of Article 373 of the Provisional Criminal Code may be sentenced to the death penalty (at the discretion of the trial judge?)

*Article 3.*—Any one who commits any of the following crimes shall be sentenced to the death penalty :

- (1) Crimes under Article 374 of the Provisional Criminal Code.
- (2) Crimes under Article 376 of the Provisional Criminal Code.
- (3) Crimes under Article 186 and Article 187 of the Provisional Criminal Code.
- (4) Crimes under Section 2 of Article 170 of the Provisional Criminal Code.
- (5) Any crimes which are found to have been committed or any second or further offence under Article 373 of the Provisional Criminal Code.

*Article 4.*—Any one who commits any of the following crimes shall be sentenced to the death penalty :

- (1) Manufacturing, storing, or carrying explosives, with intent to disturb public peace.
- (2) Forming one of a number of persons who take by force arms, munitions, boats, tax money or other articles for military purposes, or openly occupy capital cities, or other places for military purposes.
- (3) Any one who seizes and holds persons for ransom.

*Article 5.*—Any one who commits any of the crimes stated in Article 2 to Article 4 shall be tried by the Court having proper jurisdiction, or by the magistrate of the District concerned, who shall report the details to the Court of Appeal, or to the Provincial Judicial Department. The latter shall report the same to the Civil Governor for consideration. The person sentenced to death shall be executed only if and when the sentence has been confirmed by the Provincial Governor. If the judgment has been rendered by a magistrate, he shall also report the case to the Tao-yin of his district, which report shall be kept on file.

If the case is tried in Peking, the Peking District Court shall report the details of the case to the Ministry of Justice through the Chief of the High Procuration Court of Peking. If the judgment has been rendered by a magistrate, he shall report the details of the case to the Chief Executive of Peking, and the Ministry of Justice, through the Chief of the High Procuration Court of Peking. The person so sentenced shall be executed only after the sentence has been confirmed by the Ministry of Justice.

In Jehol, Tsarhar and Sianyuan, if the judgment is rendered by a magistrate, he shall report the detail of the case to the Military Governor, through the Chief of the Provincial Judicial Department. The criminal shall be executed only after the sentence has been confirmed by the Military Governor. The Magistrate shall also report the case to the Tao-yin of his district.

If the Chief of the Court of Appeal or the Provincial Department does not concur in the decision made by a judge or a magistrate he may attach a memorandum of his views when the case is reported through him for final decision.

*Article 6.*—Execution may be done by shooting.

*Article 7.*—Where there is an army led by a high military officer any one who commits a crime in violation of Article 2, Article 3 or Article 4 of these Articles may be punished by the High Military Officer of the Army concerned, under the following conditions :

- (1) When the military quarters are 100 li (three li make one mile) from a Civil Court or a judicial magistrates' yamen, communication with which is impracticable.
- (2) In case of emergency, which might lead to serious trouble, e.g. such as breaking gaol and the escaping of prisoners.

*Article 8.*—Any one condemned to death shall be executed only after the judgment and details of the case under Article 7 have been reported to, and sanctioned by, the Chief Military Officer (of the Army concerned).

*Article 9.*—If the Ministry of Justice, or Civil or Military Governor, considers the official reports from courts or judicial magistrates doubtful, the case may be ordered to be re-heard by the same Court or Magistrate, or another officer may be appointed to re-hear the case, or the re-hearing may be held by the Court of Appeal or by the Provincial Judicial Department.

If a High Military Officer considers the report from his subordinate doubtful, the case may be ordered to be re-heard by such subordinate officer, or the case may be transferred to the Court concerned, or to a judicial magistrate for re-hearing.

When criminals have been executed, the Chief of the Court of Appeal or of the Provincial Judicial Department shall report the names of those who have been executed, the dates of executions and the nature of the crimes, to the Ministry of Justice or to the Civil or Military Governor on the last day of each month. If executions have been carried out by a High Military officer, that officer shall report the names of those executed, the dates of executions and the nature of the crimes, to the Ministry of Justice, through the Ministry of War, also to the Civil or to the Military Governor concerned, on the last day of each month.



*Article 11.*—This code shall come into force on the date of promulgation.

The term during which this Code shall be in force, is five years. This code may continue in force for three years after the term of five years, as stated above, shall have elapsed.

## **" PRECAUTIONARY " REGULATIONS**

Promulgated by the President's Mandate dated the 3rd day of March, 3rd Year of the Chinese Republic (1914).

*Article 1.*—The Executive Department of the Government may, for the purpose of preserving peace and good order and protecting the freedom and welfare of the people, issue precautionary or restraining orders in any of the circumstances provided in Article 3 hereof.

*Article 2.*—The following departments of the Government may issue the said precautionary or restraining orders :

(1) Chin Cha Ting

(2) District Magistrate

In Mongolia or other places where Chin Cha Ting and Magistracies have not been established offices similar to and in the same rank as the District Magistrate may issue the said orders.

*Article 3.*—In the following circumstances the said orders may be issued :

(1) To persons who have no occupation and who frequently resort to outrageous conduct and language.

(2) To persons who obstruct others' meetings or who are about to obstruct.

(3) To persons who interfere with others' occupation, public or private, and who interfere with the liberty of others or who are about to interfere.

(4) To persons who are indiscreet and who by word and act spoil the morals of Society or interfere with public philanthropic organizations.

(5) To persons who intend to commit the acts mentioned in No. 2 and No. 3 and persons who commit the acts in No. 1 and No. 4.

*Article 4.*—The precautionary or restraining orders may consist of the following :

(1) To order a person to assume a legitimate occupation within a limit of time.

(2) To restrain a person from obstructing others' meetings.

(3) To restrain a person from extorting money by the use of any pretexts whatsoever or from presenting illegitimate demands or from forcibly compelling others to meet, or from writing threatening letters or from doing any other acts calculated to threaten, to control the will of others, to interfere with another's liberty, his occupation and business.

(4) To require a person to be of good behaviour and to restrain him from interfering with the morals and philanthropic organizations of the public.

- (5) To restrain a person from interfering with others' meetings or obstructing others in the pursuit of their occupation and business or molesting their freedom or from giving financial aid to those to whom restraining orders have been issued. To give financial aid to relatives is, however, excepted.

*Article 5.*—To persons who commit the acts stated under No. 1 and No. 4 of Article 4, the orders provided under No. 1 and No. 4 of Article 4 may be issued. To persons who commit the acts stated in No. 2 and No. 3 of Article 3 the orders provided in No. 2 and No. 3 of Article 4 may be issued. To persons who commit the acts stated under No. 5 of Article 3, the order provided in No. 5 of Article 4 may be issued.

*Article 6.*—For violations of or disobedience to the said orders the following punishments may be inflicted :

- (1) For violations of No. 1 and No. 4 of Article 4 a confinement not exceeding ten days or a fine not exceeding \$10 may be inflicted.
- (2) For violations of No. 2 of Article 4 a confinement not exceeding 15 days or a fine not exceeding \$15 may be inflicted.
- (3) For violations of No. 3 of Article 4, a confinement not exceeding 20 days or a fine not exceeding \$20 may be inflicted.
- (4) For violations of No. 5 Article 4 a confinement not exceeding 25 days or a fine not exceeding \$25 may be inflicted.

*Article 7.*—Personal service shall be made of the said orders which shall also be published by the competent authorities.

The order shall contain the following information :

- (1) Name, Age, Occupation, Native place and Residence of the person to whom the order is addressed.
- (2) Any of the acts committed as mentioned in Article No. 3.
- (3) Orders as mentioned in Article No. 4.
- (4) Punishments as mentioned in Article No. 6.
- (5) Date of the order.
- (6) Title of the Authorities who issue the order.

*Article 9.*—Persons affected by the restraining orders shall report to the authorities any change of abode 24 hours before the removal takes place ; and shall also report such change to the police authorities that have jurisdiction over the new residence. The latter police authorities shall notify the former of the arrival of such persons. The report may be made within three days if the new residence is farther than 100 li from nearest office of the police.

*Article 10.*—Persons shall report if those against whom there are restraining orders have (1) passed a night with them and (2) lived with them, and such report shall be made either verbally or in writing within 24 hours and if the place in which they live is 100 li or farther away from the nearest police station then the report shall be made within 3 days. The police officers may question the reporter and the latter shall give such true information as required of him.



*Article 11.*—Those who are under an obligation to report and who fail to report or make a false report shall be subject to a fine not exceeding \$30.

*Article 12.*—The punishments mentioned in Article 7 and in the preceding Article shall be inflicted by the authorities who issue the orders or their delegates. Such authorities may, however, delegate their power to the Police authorities who have jurisdiction over the persons against whom there are orders and the persons mentioned in Article 11 hereof.

*Article 13.*—If those against whom the said orders were issued shall be found to have been penitent, the said orders may be rescinded by the issuing authorities. They shall be notified of such rescission after same having been duly published.

*Article 14.*—The above Regulations come into force from the date of promulgation.

## SPECIAL POLICE LAWS FOR THE PRESERVATION OF ORDER, 1914

**REGULATION 1.**—No one shall commit any of the following breaches of the law :

- Sub. 1.*—Making, transporting or secretly keeping arms or explosives.
- Sub. 2.*—Carrying arms, explosives or other dangerous materials or things.
- Sub. 3.*—Establishing political associations or other associations concerning public affairs.
- Sub. 4.*—Political meetings or any other meetings concerning public affairs.
- Sub. 5.*—Meetings outside premises or public demonstrations or public gatherings.
- Sub. 6.*—Posting notices, documents or pictures in the streets or other public places, or walking about shouting or engaging in any kind of speech-making.
- Sub. 7.*—Gatherings of labourers.

**REGULATION 2.**—Unless permitted by law no one shall make or transport arms or explosives. A Police Officer seeing such breaches of the law may retain the arms and explosives : also he may search those suspected of committing or infringing the above regulation, search the person himself or any one who conceals such law-breaker.

**REGULATION 3.**—The administrative authorities, for the purpose of maintaining peace and order shall prohibit the keeping of arms or explosives secretly.

*Sub. 2.*—Infringements of regulation 2 may be dealt with (i.e. searches may be made of individuals, etc.).

**REGULATION 4.**—No one except Naval, Military and Police officers, and those designates under the statutes, shall be allowed to carry arms, and any police officer seeing any breach of this statute may retain the arms, and he may search anyone whom he may suspect.

**REGULATION 5.**—For the maintenance of peace and order the authorities may, whenever necessary, prohibit the carrying of explosives, arms or materials for making explosives, and a Police Officer may arrest any one infringing this statute, and the Police Officer may retain the articles and search, inspect or examine any whom he may suspect.

**REGULATION 6.**—When establishing a public association, such association, or branch association, shall within 3 days, notify the local Police authority, and the head-man of the association shall send the name of the association, together with a copy of the regulations, also the address of the association.

**REGULATION 7.**—In the case of Associations having to do with public affairs, notwithstanding that they may have no connection with political affairs, the administrative authorities may also, if they

think fit order them to report as above (i.e. same as political associations).

**REGULATION 8.**—None of the following named classes are allowed to become members of a political organisation :

- (1) Those who have been deprived of their civil rights, which rights have not been restored.
- (2) People under age (i.e. under 16).
- (3) Women and girls.
- (4) Naval and Military Officers and enlisted men.
- (5) Police officers and enlisted men.
- (6) Priests and those of other religious ranks.
- (7) Teachers of primary schools.
- (8) Students.

**REGULATION 9.**—The administrative authorities may dissolve any association having connection with any of the following :

- (1) When the aims of association tend to disturb peace and good order.
- (2) When the policy of the association is calculated to harm public morals.
- (3) All secret societies.

Clause 3 refers to improper, secret societies, in addition to clauses 1 and 2.

**REGULATION 10.**—12 hours before calling a political meeting the convenors shall report to the local police station : (1) The place of meeting (2) The date and time. If no meeting takes place, the permit shall be cancelled.

**REGULATION 11.**—Any meetings concerning public affairs, although they may not be of a political nature, still the authorities may order them to comply with the foregoing Regulations.

**REGULATION 12.**—The following persons shall not be permitted to attend political meetings :—(See Par. 8).

**REGULATION 13.**—Police Officers seeing meetings in progress having any connection whatever with the following conditions may close and dissolve the meeting :

- (1) Speeches being made which concern crime, before a decision of the Court has been given, or other cases in which the people are not entitled to hear the proceedings.
- (2) Speeches tending to incite to violence, or to protect criminals, or to any one who is going to rescue prisoners, or of any one charged with crime.
- (3) Speeches made at meetings which will disturb peace and public morals.

**REGULATION 14.**—As to Meetings to be held in the open, or in public places, the one who calls the meeting must report to the police not less than 24 hours before the meeting is open, but weddings, funerals, sacrifices, and students' sports do not come under this head. (1) Meeting Place. (2) Date and Time. (3) Route.

**REGULATION 15.**—Meetings held in the open or in public places which concern any of the following, may be dissolved by a Police officer :



- (1) Anything which tends to disturb the public peace and order.
- (2) Anything which affects (adversely) public morals.

**REGULATION 16.**—If Police Officer makes enquiries of the man who has called a meeting, this man must give true real facts.

**REGULATION 17.**—At all public meetings and assemblies the Police Officer may send a representative in uniform to supervise the meeting place. At all other meetings, the Police Officer for the maintenance of peace and good order may also supervise such meetings. With regard to the above the Police Officer may require the man in charge of the meeting to provide him with a seat.

**REGULATION 18.**—When a meeting is being held in a public place, and should there be a noise, disturbance or riot the Police Officer may close the meeting, and if his orders are not obeyed, he may order the people to leave the place at once.

**REGULATION 21.**—Any one who posts notices in the public streets, or other public places, or posts pictures or shouts, or does any other thing that has to do with the following, may be stopped by any Police Officer who may take possession of such printed matter :

- (1) Disturbing Public Peace.
- (2) Affecting Public Morals.

**REGULATION 22.**—The Police may prohibit gatherings of labourers having connection with any of the following :

- (1) To entice or to incite others to assemble.
- (2) To entice or incite to strike.
- (3) To entice or incite to obtain compensation by force.
- (4) To entice or incite to disturb peace and good order.
- (5) To entice or to incite to a breach of public morals.

#### INFRINGEMENTS.

**REGULATION 23.**—Regulation 2 (c 1 and Regulation 3 (c 1) will be dealt with according to C.P.C.C. 203/4/5/8/9.

**REGULATION 24.**—Infringements of Regulation 4 (c 1) Regulation 5 (c 1) will be punished by imprisonment of 20 days or less or a fine of \$20 or under.

**REGULATION 25.**—Infringements of Regulation 6 will be punished by a fine of \$30 or less. Any one making a false report will be punished by a fine of \$20 or less.

**REGULATION 26.**—Infringements of Regulation 7 will be followed by a fine of \$15. Any one making a false report will be punished by a fine of \$20 or under.

**REGULATION 27.**—Infringements of Regulation 8, by the establishing of (illegal) political associations will be followed by a fine of \$20 or under. Suborning election officers will be followed by a fine of \$20 or under.

**REGULATION 28.**—Infringements of Regulation 9, governing the formation of (illegal) associations or of joining the same, will be followed by a penalty of one year's imprisonment or under.

**REGULATION 29.**—For an infringement of Regulation 10 the penalty is a fine of \$20 or under, For making a false report, the penalty is a fine \$30 or under.

REGULATION 30.—For infringements of Regulation 11 the penalty is a fine of \$10 or under. For making a false report the penalty is a fine of \$15 or under.

REGULATION 31.—For infringements of the regulation against holding political meetings, the penalty is a fine of \$15 or under, and for joining such meetings, the penalty is a fine of \$10 or under.

REGULATION 32.—For disobeying Regulation 13 the penalty is imprisonment for five months, or under, or a fine of from \$10 to \$15.

REGULATION 33.—For infringements of Regulation 14 the penalty is a fine of \$10 or under. For making a false report the penalty is a fine of \$15 or under.

REGULATION 34.—For failure to comply with Regulation 15 the penalty is detention for twenty days, or under.

REGULATION 35.—For infringements of Regulation 16 the penalty is a fine of \$30 or under.

REGULATION 36.—For infringements of Regulation 18 the penalty is suspension for twenty days, or under, and a fine of \$20, or under.

REGULATION 37.—For infringements of Regulation 21 the penalty is detention for twenty days and a fine of \$20 or under.

REGULATION 38.—For infringement of Regulation 22 the penalty is five months' imprisonment or a fine of from \$5 to \$50.

REGULATION 39.—Penalties of \$40 or less may be imposed by the police.

REGULATION 40.—Any proceedings under these Statutes must be started within six months (of the commission of the alleged crime).

REGULATION 41.—These regulations came into force from date of promulgation i.e. from 2nd March 1914. They were revised on August 29th, 1914.

## LAW OF PENALTIES FOR BREACHES OF POLICE REGULATIONS

November 7th, 4th year of Chinese Republic (1915).

1.—This law is applicable to police cases which occur after it has been put into effect.

2.—According to this and other law or mandates or recognised police regulations, should there be no proper (legal) provision, no penalty should be inflicted upon any action whatsoever.

3.—Any person under 12 years old shall not be penalized for a breach of police regulations, but his or her parent or guardians shall be informed and directed to put him or her under their own surveillance. In case the parent or guardians cannot be found, he or she shall be given some reformation—instruction according to age and be sent to the reformatory—refuge.

4.—Insane persons shall not be penalized for an obstruction to police, except the offence is committed when they are sane (?) Whenever insane persons commit a breach of police regulations their parents or guardians shall be informed and directed to place them under their own surveillance, without regard whether or not they have been penalised.

In case their parents or guardians cannot be found, they shall be sent to insane hospitals or refuges.

5.—Whenever obstruction to police is unavoidably committed owing to self-defence or rescue of others out of immediate danger, no penalty is to be imposed, but in cases of excesses, the penalty shall be reduced by the 1st or 2nd grade.

6.—Whenever anyone is forced by nature or unable to check it by human power, such a breach shall not be penalized.

7.—Any obstruction to the police without effect is not punishable.

8.—Any one committing the 2nd offence in the same locality within 6 months of the 1st breach of police regulations shall be punishable by the addition of one grade, and for 3 offences upwards, by the addition of two grades.

With reference to police cases referred to in clause 1 of Article 3 and clause 2 of Article 4, the parents or guardians shall be answerable for further offences within 6 months in the same district.

The above penalties shall, however, be in the form of fine or fines.

9.—Any one concerned for breaches of two articles of the law simultaneously shall be dealt with separately.

10.—If two or more persons jointly commit a breach of police regulations they will each be summarily dealt with.

Those assisting the principal offenders before or after, are accessories and will be punishable with a reduction of one grade.

11.—Those who instigate others to obstruct the police will be dealt with as actual offenders.



12.—Those instigating or assisting accessories will be dealt with as accessories.

13.—The penalties against a breach of police regulations for principal offenders are :

- (1) Detention of from 1 to 15 days.
- (2) A fine of from 10 cents to \$15.
- (3) Caution.

For accessories :

- (1) Confiscation.
- (2) Suspension of business.
- (3) Compulsion to stop business.

14.—To be detained in custody in the Police Court.

15.—The amount of fine decided in Court to be paid within 5 days, failure to do so or inability to pay, will entail imprisonment instead at the rate of one day for each \$1, or less than \$1.

Those who wish to pay a fine after having already been placed in custody, may do so after deducting from the original fine the sum of days of imprisonment.

16.—Articles to be confiscated are as follows :

- (1) The article used in attacking the police.
- (2) Articles obtained from obstruction to the police.

17.—The period for suspension of business shall be less than 10 days.

18.—The penalty :—compulsion to stop business—is applicable to similar cases involving a breach of police regulations.

19.—Should there be any damage or loss of property as a result of breach of police regulations, besides the imposition of the usual penalties, the offenders may also be ordered to pay some compensation.

20.—Those who having committed a breach of police regulations voluntarily present themselves at the police stations before detection, may incur the penalty reduced by 1 or 2 grades or be discharged with a caution, (but any stipulations outside this law are excepted).

21.—When hearing police cases, the sentence passed may be heavier or lighter by the addition or reduction of 1 or 2 grades according to the merits of each case.

22.—Under the penalty provided in Article 9 the period of detention shall not exceed 30 days and the fine shall not exceed \$30.

23.—The “ one grade ” mentioned in this law refers to a quarter of the period of imprisonment, or the fixed amount of fine.

Where the period of (imprisonment) detention is less than one day or less than ten cents, as a result of reduction of penalty, it may be waived altogether, except “ Confiscation ” which is not to be waived.

24.—Where “ as under ” or “ as above ” are mentioned in this law any calculation (of time or amount) shall include the principal amount.

25.—Whenever any prisoner shall have served half the period of his sentence he may be released when and if he shows any signs of repentance.

26.—Whenever any person commits a breach of police regulations the police may bring him to Court without a summons, except

in the case of one who owns some business, or whose name and address are known, or who will not run away.

27.—Any one charged on suspicion in a police case shall appear at Court within 3 days after the receipt of summons, failure to attend promptly will entail punishment according to law.

28.—Proceedings for a breach of police regulations shall be instituted within a period of 6 months. Any sentence passed, if not carried out within 6 months after the date of judgment, will be cancelled.

29.—Twenty-four hours will count one day, and 30 days one month.

30.—In calculating this first day part of a day may be reckoned as a whole day but in calculating the last day no allowance shall be made.

31.—The release of prisoners from the prison shall take place on the afternoon of the day of expiration.

32.—Whoever commits any of the following offences shall be punishable by imprisonment of less than 15 days or a fine of less than \$15:

- (1) Manufacturing or selling fireworks without first obtaining permission from the local authorities.
- (2) Firing off fireworks or fire-arms in the midst of crowds.
- (3) After learning of the existence of ammunition or explosives refraining from reporting the same to the police authorities.
- (4) Carrying firearms without permission from the authorities.
- (5) Disseminating rumours.
- (6) Recklessly burning anything near a private house or in the fields.
- (7) At the time of a fire or famine, disobeying the authorities' orders to take protective measures.
- (8) Wilfully allowing mad persons, rabid dogs or dangerous animals to run into any highway, private house or public structure.

33.—Whoever commits any of the following offences shall be punishable by imprisonment of less than 15 days or a fine of less than \$15:

- (1) Undertaking any work or trade contrary to law or regulations.
- (2) Opening any theatre or place of public entertainment contrary to law or regulations.
- (3) Not reporting to the police any person staying in a lodging house well knowing the man to be a criminal.

34.—Whoever commits any of the following offences shall be punishable by imprisonment of less than 10 days or a fine of less than \$10.00:

- (1) Marriage, birth or death and removal of any body without first reporting to the police authorities in accordance with the provisions of law and regulations.
- (2) Building structures (houses) without first reporting to the police authorities in accordance with the law and regulations and not according to approved plans.

- (3) Failing to register the names, ages, occupations, etc., of guests staying in lodging houses.
- (4) Failing to report facts as to public gatherings when the police make enquiries or disobeying an order to disperse.
- (5) The secret removal or burial of corpses without first making a report to the police.

*N.B.*—Lodging houses having infringed clauses (3) above, 3 times over, within 6 months in the same locality may be ordered to be closed.

35.—Whoever commits any of the following offences shall be punishable by detention of less than 5 days or a fine of less than \$5 :

- (1) Erecting a house, etc., beyond the boundary one's own property.
- (2) Delaying to comply with the authorities' orders to make necessary repairs to houses, etc., which are found to be in a dilapidated condition.
- (3) Destroying roadside poles, lamps or other public property.
- (4) Gathering together and making a great noise in a school, museum, library, or other public place.
- (5) Blowing police whistles (without cause) on a highway or in any public place (without regard to the order of prohibition).
- (6) Singing in a loud voice on a highway or in a public place (without regard to the order of prohibition).
- (7) Drunken and disorderly conduct on a highway or in a public place.
- (8) Quarrelling or fighting on a highway or in a public place without obeying the order of prohibition.
- (9) Going in and out at places where passage is prohibited.
- (10) Hiding in a house which is empty.
- (11) Creating a loud noise at night without good cause.
- (12) Disturbing or molesting any shop or business houses on any pretext.
- (13) Selling any property at a higher price than that fixed by the authorities.
- (14) Being a coolie, servant or mafoo, demanding extra or additional charges over and above the tariff rates.

*N.B.*—For breaches of clauses (13) and (14) the money obtained by extra charges will be confiscated. For 2 or more breaches of clauses (13) and (14) within 6 months in the same police district, the offender may be temporarily suspended from work and over three offences may be compelled or ordered to stop work, as circumstances permit.

36.—Any person who being a proprietor or manager of a tea-house, wineshop or place of public amusement, permits guests or customers to remain on the premises after the closing hour fixed by the police, shall be liable to a fine of \$10 or less. For a second offence within six months in the same locality, he may be ordered to temporarily suspend business and for 3 offences or more he may be compelled to close up the premises, as circumstances require.

37.—Those customers or visitors who remain on the premises of tea-houses, teashops or places of public amusement, after the



prescribed hour, shall be liable to a fine of \$5 or under, should they disobey police advice to leave the premises.

38.—Whoever commits any of the following offences will be liable to arrest and detention of 5 days or under or a fine of \$5 or under :

- (1) Making a noise or creating trouble in any administrative building or public office, without regard to the order of prohibition.
- (2) Removing or destroying proclamations.

39.—Whoever commits any of the following offences shall be liable to arrest and detention of 10 days or a fine of \$10 or under :

- (1) Falsely charging another person with a breach of police regulations or giving false evidence.
- (2) Making or giving false evidence for the purpose of protecting or helping any one who has committed a breach of police regulations.
- (3) Concealing any offender against police regulations or advising or assisting him to escape.

*N.B.*—With regard to (1) and (2) above, those voluntarily giving themselves up before judgment or conclusion of proceedings, will be exonerated.

As to (3) similar lenient treatment will be extended if the offender is a relative.

40.—Whoever commits any of the following offences shall be liable to arrest and detention of 15 days or under or a fine of \$15 or under :

- (1) Causing obstruction to the dispatch of mail matter or telegraphic matter, where the circumstances are not of a serious nature.
- (2) Destroying postal articles where the circumstances are not of a serious nature.
- (3) Obstructing telegraphic or telephonic operations where the circumstances are not of a serious nature.

41.—Whoever commits any of the following offences shall be liable to arrest and detention of 5 days or under, or a fine of \$5 or under :

- (1) Failing to adopt precautionary measures or to cover up any drain, well or ditch in any passage-way on private property.
- (2) Furious driving of cars or ponies in public places or narrow streets, without regard to advice to stop.
- (3) Non-provision of alarm bells on vehicles, or provision of bells contrary to regulations.

42.—Whoever commits any of the following offences shall be punishable with a fine of \$5 or less :

- (1) Refusing to pay the fare according to the tariff rates when taking a crossing at any ferry or bridge.
- (2) Placing merchandize or toys, etc., on the roadside against orders.
- (3) Recklessly placing cars or rafts, thereby causing damage to bridges or embankments.

- (4) Obstructing traffic by parking vehicles across highways or dumping stone, timber or firewood thereon.
- (5) Exercising ponies thereby causing obstruction to traffic.
- (6) Driving vehicles and ponies abreast thereby obstructing traffic.
- (7) Navigating boats abreast thereby obstructing boat traffic.
- (8) Throwing or dumping refuse and dirty matter into waterways.
- (9) Playing or taking exercises on a highway without regard to prohibition regulations.
- (10) Failure of street scavengers after receipt of the authorities' advice.
- (11) Driving a car or pony at night without a lantern.
- (12) Extinguishing street lighting.
- (13) Passing through any thoroughfare which is closed by an official proclamation.

43.—Whoever commits any of the following offences shall be liable to arrest and detention not exceeding 15 days or a fine not exceeding \$15 :

- (1) Loitering on a highway.
- (2) Priests or beggars begging arms.
- (3) Secret harlots' prostitution or the keeping of persons for immoral purposes.
- (4) Indecent singsongs or theatrical performances.

44.—Whoever commits any of the following offences shall be liable to arrest and detention not exceeding ten days or a fine not exceeding \$10 :

- (1) Defacing or damaging temples or other public buildings, where circumstances (extent of damage) are not severe.
- (2) Soiling or damaging other peoples' graves or monuments.
- (3) Scolding or mocking other people in public.
- (4) Inciting an employee to use rough language or violent conduct towards his employer or employer's friends (?).
- (5) Using dirty language on a highway without regard to any order to stop.

*N.B.*—With regard to (3) and (4) above, action can not be taken until the appearance of the complainants.

45.—Whoever commits any of the following offences shall be liable to arrest and detention not exceeding 5 days or a fine not exceeding \$5 :

- (1) Gambling on a highway or in public places.
- (2) Going out naked on a highway or in public places.
- (3) Using indecent language or immoral conduct on a highway or, in public places.
- (4) Wearing curious dresses detrimental to public morals.

46.—Whoever commits any of the following offences shall be liable to arrest and detention not exceeding 15 days or a fine not exceeding \$15 :

- (1) Selling poisonous drugs without the authorities' license being first obtained.

- (2) Opening a manure-factory in any densely populated locality.
- (3) Boiling any matter which emits a bad smell in a densely populated place, without regard to prohibition regulations.
- (4) Selling aphrodisiac-medicines or drugs to procure abortion and/or advertising their sale.

*N.B.*—Within 6 months in the same locality, offenders of (1) and (2) or more times shall be ordered to suspend business and 3 times or over, ordered to close shop.

47.—Whoever commits any of the following offences shall be liable to arrest and detention not exceeding 10 days or a fine not exceeding \$10 :

- (1) Exposing foodstuffs for sale without being properly covered.
- (2) Selling adulterated food or drinks in order to make illegal gains.
- (3) Selling spurious medicines or refusing to sell medicines at night in emergency cases.
- (4) Medical practitioners or maternity nurses who have obtained permission from the authorities to practice their profession will be liable to a fine of not exceeding \$10 should they decline attendance, or delay in going to attend a patient, without good cause.

49.—Whoever commits any of the following offences shall be liable to a fine of not exceeding \$5 :

- (1) Destroying drainage or disobeying the authorities' orders to clean same.
- (2) Carrying ordure over the street without covering up the buckets, etc.
- (3) Mooring nightsoil boats off busy centres of any trade port.
- (4) Throwing any refuse, etc., into people's houses.
- (5) Creating a nuisance on a highway or in a public place.

50.—Whoever commits any of the following offences shall be liable to arrest and detention of not exceeding 15 days or a fine of not exceeding \$15 :

- (1) Using violence without inflicting bodily harm.
- (2) Applying hypnotism with improper intentions.

51.—Whoever commits any of the following offences shall be liable to detention of not exceeding 10 days or a fine of not exceeding \$10 :

- (1) Setting free other people's cattle or animals.
- (2) Unfastening other people's boats or rafts.
- (3) Selling or purchasing merchandise or books by force.

52.—Whoever commits any of the following offences shall be liable to detention of not exceeding 5 days or a fine of not exceeding \$5 :

- (1) Compelling any person to join a society without good cause.
- (2) Destroying any person's residence, shop, signboard or legitimate advertisements, without good cause.
- (3) Posting notices on the walls of other person's buildings, and or defacing their pictures, without good cause.



- (4) Digging up stone or mud from public or private property, when the circumstances are not of a serious nature.**
- (5) Plucking flowers or fruits in other people's property.**
- (6) Trespassing upon other persons' gardens or ground and/or leading animals thereto.**

**53.—This law will have effect from the date of promulgation.**

## REGULATIONS GOVERNING THE USE OF POLICE WEAPONS

Promulgated in President's Mandate dated March 2nd, 3rd year  
of the Chinese Republic (1914).

*Article 1.*—Police Officers are not permitted to use Weapons in the execution of their duties unless all peaceful measures have been exhausted.

*Article 2.*—The Weapons to be used by Police Officers in the execution of their duties are the following :—

- (1) Clubs
- (2) Bayonets
- (3) Guns

Police Officers may carry clubs and bayonets on ordinary occasions. When it is necessary for the preservation of peace and good order they may be instructed to carry guns by the Minister of Home Affairs or such other high authorities of the Police as Officers in charge in Police Stations.

*Article 3.*—Police Officers, in the execution of their duties, may, when deemed necessary, use police clubs for the purpose of directing and suppressing.

*Article 4.*—Police Officers shall not use bayonets or guns except in the following circumstances :

- (1) When violent persons carry dangerous weapons for the purpose of injuring the life, person or property of the public and there is no other means of giving protection than by using bayonets and firing guns.
- (2) When arresting or pursuing a criminal or criminals and such criminal or criminals resist with dangerous weapons and there is no other means of defense than by using bayonets or firing guns.
- (3) In case of disturbances and riots which are unforeseen and there is no means of suppressing such disturbances or riots other than by using bayonets and firing guns.

*Article 5.*—In the circumstances enumerated in Article 4 the Police Officers shall immediately desist from using bayonets or firing guns when there is a sign of submission.

*Article 6.*—In the circumstances enumerated in Article 4 and when the use of bayonets and firing of guns is necessary the Police Officers shall use due care not to injure persons other than those concerned.

*Article 7.*—In using bayonets or firing guns the Police Officer, unless he is in an extraordinarily dangerous position, shall use due care not to attack the vital parts of the person or persons concerned.

*Article 8.*—When bayonets have been used or guns fired the Police Officer shall report to his headquarters the circumstances that justified his conduct whether any person has been injured or not.

*Article 9.*—The Police Officer shall be punished if he uses bayonets or fires guns when the circumstances enumerated in Article 4 are not present. In such case if any person is injured or killed, the offending officer shall be dealt with according to the criminal law of the country and the Government shall pay compensation to the party or parties concerned.

*Article 10.*—These regulations apply when the gendarmerie administer the duties of the police.

*Article 11.*—The above rules come into force from the date of promulgation.



**RULES OF PROCEDURE OF THE SHANGHAI  
PROVISIONAL COURT.\***

**CRIMINAL PROCEEDINGS.**

**How charge to be made.**

1.—A person desiring to institute criminal proceedings against another shall file with the Chief Clerk a complaint in writing signed by the complainant and specifying the offence charged.

**Summons or Warrant.**

2.—In every case the Court shall proceed, if the accused is not already in custody, either by way of summons to him or by way of warrant for his apprehension in the first instance, according as the nature and circumstances of the case require.

**SUMMONS.**

**Service.**

3.—A summons shall be served by the delivery of it to the person summoned personally, or if he cannot be conveniently met with then by its being left at his usual or last known place of abode or business within the particular jurisdiction.

**Proof of service.**

The person effecting service must attend in court to prove service if necessary.

**WARRANT.**

**In what cases.**

4.—If the person summoned does not obey the summons the Court may (after proof of due service of the summons) issue a warrant for his apprehension.

Notwithstanding the issuing of a summons a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

A warrant shall not be issued in the first instance unless the charge is in writing and signed by the person laying the charge.

5.—Repealed.†

**SEARCH WARRANT.**

**In what cases.**

6.—Where proof or suspicion is shown to the satisfaction of the Court that anything on, by or in respect of which a crime or offence cognizable by the Court has been committed, or which is necessary or required for or in connection with proof of such a crime or offence, is in any house or place over which, by reason of the nationality of the occupier thereof the Court has jurisdiction, the Court may issue a warrant to search the house, or place, and if any thing searched for is found, to seize, it, and apprehend the occupier of the house or place.

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*\*The present regulations are strictly conforming to the respective arrangement between the Consular Body and the Provincial Authorities embodied in the Notes of December 1926. However, in view of the difficulty of co-ordinating these regulations with the maxims of Chinese Procedural Laws and local judicial conditions, the Court is frequently compelled to deviate from their strict observation.—Author.*

†“All summonses, warrants and orders of the Court shall be valid after they have been signed by a Judge. All such summonses, warrants and orders shall be numbered for record by the Chief Clerk before service. When the summons, warrant or order is to be executed on premises occupied by a foreigner having extraterritorial rights, the Consul or other appropriate official of the Power concerned shall on presentation affix his countersignature without delay (in conformity with the provisions of the treaties.—Senior Consul's Note, December 31st, 1926).”—Provisional Agreement for the Rendition of the Mixed Court, September 27th, 1926.

If the house or place is closed, and the officer is denied admission, after demanding admission and disclosing the authority and the object of his visit, it may be forced open.

7.—The warrant shall be directed to some officer by name, who alone shall be entrusted with its execution, but he may be accompanied by any person or persons necessary to assist him in his search. In what form.

A general warrant to search shall not be granted, but the particular house or place must be indicated in it.

#### WITNESSES.

8.—Where it is shown to the Court that any person over whom the Court has jurisdiction is likely to give material evidence, either for the prosecution or for the defence, the Court shall issue a summons for his attendance. And in the case of a witness, outside the jurisdiction, the Court may request the competent authority to secure the attendance of such witness. Summons.

9.—If any person so summoned does not obey the summons, and does not excuse his failure to the satisfaction of the Court, then (after proof of the service of the summons) the Court may issue its warrant to compel his attendance. Warrant after summons.

10.—When it is shown to the Court that any person subject to its jurisdiction is likely to give material evidence either for the prosecution or for the defence, and that it is probable he will not attend to give evidence, unless compelled to do so, then instead of issuing a summons the Court may issue a warrant in the first instance. Warrant in first instance.

11.—If any witness within the particular jurisdiction refuses to answer any question put to him, and does not excuse his refusal to the satisfaction of the Court, then the Court may commit him to prison. Refusal to answer.

#### PROCEDURE.

12.—When the accused comes before the Court no objection to any charge, summons, or warrant, for any defect in substance or form, or for any variance between it and the evidence adduced on the part of the prosecution, shall be allowed. Variance of evidence.

But if any variance between the charge and the evidence appears to the Court to be such that the accused has been thereby deceived or misled, the Court may adjourn the hearing.

13.—Where the accused appears in answer to a summons or is brought before the Court upon a warrant or is already in custody the Court may proceed to hear and determine the matter in a summary way but may in its discretion remand the case to be heard upon a day of which due notice shall be given. Hearing or remand.

14.—Where a case is so remanded and it is intended at the trial to proceed upon any charge or charges not contained in the summons or warrant or not contained in the Police Charge Sheet (where the accused is already in custody) the prosecution shall file in Court not less than three clear days before the date fixed for the hearing copies of such charge or charges and the Court shall give notice thereof to the accused or his Counsel at least two clear days before the date fixed for the hearing. Notice of charges.

All trials shall be held in open Court, except in the case of offences against morality when the presiding Judge may, in his discretion, exclude all persons other than those directly connected with the case.

**Adjournments.**

15.—If in the course of proceedings the Court considers it necessary or advisable, the Court may, for any cause whatsoever, adjourn the proceedings and may, from time to time, remand the accused for such time as seems reasonable, not exceeding fourteen days, to some prison or other place of security.

During the period of remand the Court may nevertheless, order the accused to be brought before it.

Instead of detaining the accused in custody, during the period of remand the Court may release him upon his finding such security, as, in the opinion of the Court, will be sufficient to ensure his appearance at the proper time.

**HEARING.**

**Non-appearance  
of prosecutor.**

16 —Where the accused comes before the Court on summons or warrant, or otherwise, either originally or on adjournment, then if the prosecutor, having had due notice of the time appointed for the hearing or adjourned hearing of the charge, does not appear in person or by counsel or attorney, the Court shall dismiss the charge, unless for some reason it thinks proper to adjourn or further adjourn the hearing, with or without imposing any terms.

**Conduct of  
charge.**

17.—The prosecutor shall be at liberty to conduct the charge and to have the witnesses examined and cross-examined by counsel on his behalf.

**Of defence.**

18.—The accused shall be admitted to make his full answer and defence to the charge, and to have the witnesses examined and cross-examined by counsel on his behalf ; and if he does not employ counsel he shall, at the close of the examination of each witness for the prosecution, be asked by the Court whether he wishes to put any questions to the witness.

**Admission of  
charge by  
accused.**

19.—The substance of the charge shall be stated to the accused, and he shall be asked if he has any cause to show why he should not be convicted.

If he thereupon admits the truth of the charge, and does not show sufficient cause why he should not be convicted, the Court may convict him accordingly. The Court shall take such evidence as may be considered necessary to enable it properly to pass sentence.

If he does not admit the truth of the charge, the Court shall proceed to hear the prosecutor and such witnesses as he examines and such other evidence as he adduces in support of his charge.

On the termination of the whole evidence in support of the charge, if it appears to the Court that a *prima facie* case is made out against the accused, he shall be asked by the Court if he wishes to say anything in answer, or has any witnesses to examine or other evidence to adduce in his defence ; and the Court shall then hear the accused and his witnesses and other evidence, if any.

**Evidence in  
reply.**

20.—If the accused adduces any evidence in his defence the prosecutor may, by leave of the Court, adduce evidence in reply thereto.



21.—Where the prosecutor is represented by Counsel proceedings shall commence by a short statement by Counsel setting out the material facts intended to be proved. He shall then proceed to call his witnesses who shall be open to cross-examination by the accused or his Counsel.

Order of proceedings.

At the conclusion of the case for the prosecution, if the accused be represented by Counsel and it is intended to call evidence other than the evidence of the accused himself, Counsel for the defence shall open his case in like manner and proceed to call his witnesses. At the conclusion of his evidence he shall sum up on the whole case and Counsel for the prosecution shall have the right of reply.

Where the accused, elects to give evidence and it is not intended to call other evidence, Counsel for the accused shall not be entitled to make any opening statement but shall proceed to call the accused at once. At the conclusion of his evidence and cross-examination Counsel for the accused shall sum up his case and Counsel for the prosecution shall have the right of reply.

Where no evidence is called for the defence Counsel for the prosecution shall sum up immediately on the conclusion of the examination and cross-examination of his witnesses and Counsel for the defence shall have the right of reply.

If a witness be cross-examined the party calling him, or his Counsel, may re-examine him.

22.—The Court having heard what each party has to say as aforesaid, and the witnesses, and the evidence adduced, shall consider the whole matter and finally determine the same, and shall either convict the accused or dismiss the charge.

Conviction or dismissal.

23.—In case of conviction a minute thereof shall be made, and shall be preserved among the records of the Court.

Minute.

24.—In case of dismissal of the charge the Court may, if it thinks fit, on being requested so to do, give the accused a certificate thereof which certificate shall on being produced, without further proof, be a bar to any subsequent charge for the same offence against the same person.

Certificate.

#### REHEARING.

25.—Any convicted person may file with the Chief Clerk of the Court a notice of motion for a rehearing or for a reduction of sentence. Such notice shall set forth generally the grounds on which the motion is based, and shall be filed ordinarily within 14 days after conviction but afterwards by special leave of the Court.

Notice of motion.

#### APPEAL.

26.—An appeal to the competent Court of Appeal shall lie for any final judgment and every interlocutory order made by the Court of First Instance, and shall be preferred by filing with the Chief Clerk a notice of appeal. Such notice shall set out generally the grounds on which the appeal is based and shall be filed within ten days after such judgment or order, or within such extended period as the Court of Appeal may appoint.

On receipt of such notice the Chief Clerk shall forthwith place the case in the Hearing List of the Court of Appeal.

27.—The procedure relating to trials in Courts of First Instance applies, *mutatis mutandis*, to trials of appeals.

28.—The Court of Appeal may :—

- (a) dismiss the appeal.
- (b) quash that part of the judgment of the Court of First Instance which is attacked and give a fresh judgment in respect thereof.
- (c) order a new trial, or.
- (d) make any other order.

## CIVIL PROCEEDINGS.

### PETITION.

Petition.

1.—All proceedings shall be commenced by the filing of a petition, except where otherwise provided by these Rules.

Contents of petition.

2.—The petition shall contain a narrative of the material facts, matters, circumstances on which the plaintiff relies, such narrative being divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and shall pray specially for the relief to which the plaintiff may conceive himself entitled, and also for general relief.

The petition must be as brief as may be consistent with a clear statement of facts on which the prayer is sought to be supported, and with information to the defendant of the nature of the claim set up.

The petition may not contain statements of the mere evidence by which the facts alleged are intended to be proved.

Copies to be filed.

3.—The plaintiff shall file with the Chief Clerk three copies of the petition in Chinese and a copy for each defendant in the case.

Where a Consular Official sits with the Judge, the plaintiff shall, in addition, file three copies of translation in English of the petition.

Fees.

4.—Filing fees are payable at the time of filing of the petition and no petition will be accepted until the filing fee is paid.

### SECURITY TO ANSWER SUIT.

Security.

5.—Upon petition being filed the Court shall issue a summons to be served with a copy of the petition upon the defendant calling upon him to appear in person before the Court to give security for his appearance in answer to the suit.

If the defendant fails to appear a warrant shall forthwith be issued for his arrest but the Court may if it thinks fit adjourn the summons and notify the defendant thereof.

The summons shall state clearly that if the defendant fails to appear as ordered he shall be liable to arrest and shall contain a notice that if the defendant desires to avoid being temporarily detained he shall immediately give notice to the Court of the names of his intended sureties and shall appear in answer to the summons accompanied by such sureties.

6.—The defendant shall be held in custody by the Court until he gives bail or security with a surety or sureties to the satisfaction of the Court in such sum as the Court shall think sufficient to secure

his attendance but not exceeding the probable amount of the debt or damages to be recovered in the action, that he will appear at any time when called on, while the action is pending. If the defendant fails to appear when called upon to do so, his surety or sureties shall forthwith pay into Court the amount of such security and in default thereof shall be liable to be arrested and kept in custody until the same is paid.

7.—Where money is paid into Court as security or otherwise such money shall not, nor shall any part thereof, be paid out without the specific order of the Court. Withdrawal of security.

8.—Where there is reasonable cause for suspicion that a defendant is about to abscond from the jurisdiction of the Court, the Court may, upon *ex parte* application by the plaintiff supported by satisfactory evidence at any time after petition is filed, order that defendant be forthwith arrested and detained in custody until he gives such security for his appearance as the Court shall order. Absconding defendant.

#### URGENT ORDERS.

9.—On proof of great urgency or other peculiar circumstances, the Court may, if it thinks fit, before a petition is filed, and without notice, make an order of injunction, or an order to sequester money or goods, or to hold to bail, or to attach property. Urgent orders.

10.—Before making such an order the Court may require the person applying for it to enter into a recognizance (with or without a surety or sureties as the Court thinks fit) signed by the party applying (and his surety or sureties if any), as a security for his being answerable in damages to the person against whom the order is sought, or to give such other security for that purpose by deposit or otherwise as the Court thinks fit. Recognizance.

11.—No such order shall remain in force more than 24 hours, unless within that time a suit is regularly instituted by the person obtaining the order. Duration of order.

Any such order may be dealt with in the suit as seems just.

#### *Varying orders made on ex parte application.*

12.—Where an order is made on a motion *ex parte* any party affected by it may within 7 days after notice of it, apply to the Court by motion to vary or discharge it; and the Court on notice to the party obtaining the order, either may refuse to vary or discharge it or may vary or discharge it with or without imposing terms as to security or other things as seems just. *Ex parte* orders may be varied.

#### PARTICULARS OF CLAIM.

13.—Any plaintiff not giving sufficient information to enable the defendant reasonably to understand the nature and particulars of the claim set up against him may be ordered, on the application of the defendant before answer, to amend his petition or to give further particulars. Application by defendant.

The plaintiff may be ordered to annex copies of, or produce for inspection such papers or documents in his possession or power as he has referred to in the petition.



## AMENDMENT OF PETITIONS.

14.—A petition may be amended at any time before answer without leave but a petition shall not be amended after answer except by leave of the Court.

## PARTIES.

Suit on behalf of others.

15.—Persons entitled to sue and suing on behalf of others as guardians, executors, or administrators—or on behalf of themselves and others, as creditors in a suit for administration—must state the character in which they sue.

Joint and several demand.

16.—Where the plaintiff has a joint and several demand against several persons, either as principals or as sureties, it is not necessary for him to bring before the Court as parties to a suit concerning such demand all the persons liable thereto, but he may proceed against one or more of the persons severally liable.

Non-joinder or misjoinder.

17.—If it appears before or at the hearing that any person not joined as plaintiff or as defendant ought to be so joined—or that any person joining as plaintiff or as defendant ought not to be so joined—the Court may order the petition to be amended, with liberty to amend the other pleadings (if any), and on such terms as to time for answering, postponement or adjournment of hearing and costs, as justice requires.

But no person shall be so joined as plaintiff without satisfactory evidence to the Court of his consent thereto.

Distinct causes of suit in one petition.

18.—In case a petition states two or more distinct causes of suit, by and against the same parties, and in the same rights, the Court may, either before or at the hearing, if it appears inexpedient to try the different causes of suit together, order that different records be made up, and make such order as to adjournment or otherwise as justice requires.

In case a petition states two or more distinct causes of suit, but not by and against the same parties, or by and against the same parties but not in the same rights, the petition may on the application of any defendant be dismissed.

## ANSWER.

Time for answer.

19.—An answer to a petition shall, unless the Court otherwise order, be delivered within twenty clear days from the service of the petition.

Failure to answer.

In default of answer the plaintiff may apply to the Court by motion for judgment and upon such application the Court may upon hearing the evidence give judgment in favour of the plaintiff or may extend the time for delivery of answer upon such terms as to the Court appears just.

Further time for answer.

20.—The defendant may obtain further time for putting in his answer, by motion stating the further time required and the reason why it is required.

Proof of claim.

21.—Where a defendant does not put in any answer he shall not be taken as admitting the allegation of the petition, or the plaintiff's right to the relief sought ; and at the hearing (even though such defendant does not appear) the plaintiff must open his case, and adduce evidence in support of it, and take such judgment as to the Court appears just.

22.—The answer shall show the nature of the defendant's defence to the claim set up by the petition, but may not set forth the evidence by which such defence is intended to be supported. Nature of answer.

It should be clear and precise, and not introduce matter irrelevant to the suit.

It must deny specifically each and all of the material allegations in the petition which the defendant intends to deny at the hearing.

It must specifically admit such material allegations in the petition as the defendant knows to be true or desires to be taken as admitted.

23.—The defendant shall file with the Chief Clerk three copies of the answer in Chinese and a copy for each plaintiff in the case. Copies to be filed.

Where a Consular Officer sits with the Judge, the defendant shall, in addition, file three copies of translation in English of the answer.

24.—Where the defendant puts in an answer amounting only to a general denial of the plaintiff's claim, the plaintiff may apply by motion for an order to compel him to answer specifically to the several material allegations in the petition; and the Court, if such allegations are briefly, positively, separately and distinctly made, and it thinks that justice so requires, may grant such an order. Motion to compel.

25.—Any defendant not giving sufficient information to enable the plaintiff reasonably to understand the nature and particulars of the defence set up against him may be ordered on the application of the plaintiff to amend his answer or to give further particulars. Further particulars.

The defendant may be ordered to annex copies of or produce for inspection such papers or documents in his possession or power as he has referred to in the answer.

26.—An answer may be amended at any time by leave of the Court or with the consent of the plaintiff. Amendment.

#### COUNTERCLAIM.

27.—Where a defendant in his answer raises any specific claim against any plaintiff subject to the jurisdiction of the Court, and it appears to the Court that on such defence being established he may be entitled to relief against the plaintiff the Court may at any time after such answer is filed, upon application by the defendant, order the plaintiff to give security for his appearance at the trial in the same manner as if such claim had been made the subject-matter of a separate petition filed by the defendant, and may make such order for the hearing of the suit and counterclaim together or otherwise as shall seem just. Cross petition in same suit.

#### PAYMENT INTO COURT.

28.—Any party to an action may at the time of filing his Petition Answer or other Pleading pay into Court any sum of money whether by way of tender or with an admission or denial of liability or as stakeholder or trustee or otherwise. With pleading.

29.—In the case of every such payment into Court the party making the same shall state the fact of such payment in his Petition Answer or other Pleading. He shall also file a statement in writing giving particulars of such payment and referring to his Petition Answer or other Pleading. Statement of particulars.

Receipt.

30.—The Chief Clerk shall give a receipt to every party paying moneys into Court at any time.

PROCEEDINGS AFTER ANSWER.

No pleading after answer.

31.—No other pleading after answer is allowed, except by leave of the Court.

REFERENCE OF ACCOUNT.

In what cases.

32.—Where it appears to the Court at any time after suit instituted, that the question in dispute relates either wholly or in part to matters of mere account, the Court may order that it be referred either wholly or in part to some person agreed on by the parties, or in case of their non-agreement, appointed by the Court.

The referee shall enter into the account and hear evidence and report on it to the Court, according to the order; and the Court after hearing the parties may adopt the conclusion of the report either wholly or in part, or may direct a further report to be made by the referee, and may grant any necessary adjournment for that purpose.

DISMISSAL FOR WANT OF PROSECUTION.

In what cases.

33.—Where it is the duty of the plaintiff by reason of any provision of these rules or in pursuance of any order of the Court to file any document or take any steps in any action or matter, and such document or step is not filed or taken within the limit of time prescribed by the rules or order as the case may be, the defendant may by motion apply to the Court to have the petition dismissed and upon such application being made the Court may, if it thinks fit, make an order dismissing the petition, or make such other order or impose such terms as the Court thinks just and reasonable.

DISCONTINUANCE.

Notice of.

34.—A plaintiff who desires to discontinue the action or matter against all or any of the parties thereto shall give written notice to the Chief Clerk and to the parties as to whom he wishes to discontinue the action or matter.

CHIEF CLERK

Record to be kept.

35.—(i) The Chief Clerk of the Court shall keep a complete file and record of every action and shall enter therein every document filed and every order made and every document and entry in such record shall be distinguished by a number corresponding with the number of the action or matter to which the entry relates.

Filing documents, etc.

(ii) When, under these rules, any application is to be made to, or any notice or other document is to be delivered to or filed with the Court, such application, notice, delivery, or filing, shall be effected by leaving during office hours the application in writing or the document in the Chief Clerk's office and not otherwise.

HEARING LIST.

Hearing List.

36.—There shall be kept by the Chief Clerk a Hearing List for causes between Chinese and Chinese and a Hearing List for causes between foreign plaintiffs and Chinese defendants.

Whenever a petition shall have been filed the Chief Clerk shall enter the case upon the Hearing List to which it belongs and.



unless the Court shall otherwise order, it shall come on for hearing strictly in its order upon such list.

#### GENERAL POWERS OF THE COURT.

37.—The Court (for reasons which must be duly recorded) may at any time do any of the following things as the Court thinks just :— Postponement.

- (i) Defer or adjourn the hearing or determination of any action, proceeding or application :
- (ii) Order or allow the striking out or amendment of any pleading :
- (iii) Appoint or allow a time for, or enlarge or abridge the time appointed or allowed for, or allow further time for the doing of any act or the taking of any proceeding :—
- (iv) Make orders for production, inspection or discovery of documents, payment into or delivery to the Court or interim injunctions or other orders of an interim or interlocutory nature.

38.—No action or proceeding shall be treated by the Court as invalid on account of any technical error or mistake in form or words.

#### INTERLOCUTORY APPLICATION.

39.—All applications to the Court made after service of petition and before trial shall be made by motion in open Court and notice of every application shall, be given to the opposite party at least two clear days before the day fixed for the hearing thereof. Interlocutory applications to be made by motion.

#### HEARING.

40.—When a cause in the Hearing List has been called on, if neither party appears either in person or by counsel or attorney, the Court, on being satisfied that the plaintiff has received notice of the hearing, shall, unless it sees good reason to the contrary, strike the cause out of the Hearing List. Hearing of cause non-appearance of both parties.

41.—If the plaintiff does not appear in person or by counsel or attorney, the Court, on being satisfied that the plaintiff has received notice of the hearing shall, unless it sees good reason to the contrary, strike out the cause, and make such order in favour of any defendant appearing as seems just. Non-appearance of plaintiff.

42.—If the plaintiff appears, but the defendant or any of the defendants does not appear, in person or by counsel or attorney, the Court shall, before hearing the case, inquire into the service of the petition and of notice of hearing on the absent party or parties. Non-appearance of defendant.

If not satisfied as to the service on every party, the Court shall order that further service be made as it directs, and adjourn the hearing of the cause for that purpose.

If satisfied that the defendant or the several defendants has or have been duly served with the petition and with notice of the hearing the Court may proceed to hear the cause notwithstanding the absence of the defendant or any of the defendants, and may, on the evidence adduced by the plaintiff, give such judgment as appears just.

Re-hearing for  
defendant.

43.—Where the Court hears a cause and gives judgment in the absence of and against any defendant, if such defendant shall apply within one month from such judgment the Court may, if it thinks fit, on such terms as seem just, set aside the decree and rehear the cause, on its being established to the satisfaction of the Court that the defendant's absence was not wilful and that he has a defence upon the merits.

Restoration of  
cause to list for  
plaintiff.

44.—Where a cause is struck out by reason of the absence of the plaintiff, it shall not be restored without leave of the Court.

#### PROCEDURE AT THE HEARING.

Order of  
Proceeding.

45.—The order of proceeding at the hearing of a cause shall be as follows :

The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties has the right to begin :

He shall address the Court and open his case.

He shall then call his evidence and examine his witnesses in chief.

When the party beginning has concluded his evidence, he shall ask the other party if he intends to call evidence (in which term is included documentary evidence not already read or taken as read) ; and if answered in the negative, he shall be entitled to sum up the evidence already given, and comment thereon ; but if answered in the affirmative, he shall wait for his general reply.

When the party beginning has concluded his case, the other party shall be at liberty to address the Court, and to call evidence, and to sum up and comment thereon.

If no evidence is called or read by the latter party, the party beginning, shall have no right to reply, unless he has been prevented from summing up his case by the statement of the other party of his intention to call evidence.

If the party opposed to the party beginning calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may with the leave of the Court call fresh evidence in reply to the evidence given on the other side.

Where evidence in reply is tendered, and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the Court, and the party beginning shall be entitled to the general reply.

Cross examina-  
tion and re-ex-  
amination.

46.—Each witness, after examination in chief, shall be subject to cross-examination by the other party, and to re-examination by the party calling him, and after re-examination may be questioned by the Court, and shall not be recalled or further questioned save by leave of the Court.

Note of  
evidence.

47.—The Court shall take or cause to be taken a note of the evidence.

Objection to  
evidence.

48.—All objections to evidence must be taken at the time the question objected to is put, or, in written evidence, when the same is about to be put in, and must be argued and decided at the time.

Note of  
objection.

49.—Where a question put to a witness is objected to, the Court, unless the objection appears frivolous, shall take a note of the question and objection, if required by either party, and shall mention

on the notes whether the question was allowed to be put or not, and the answer to it, if put. Documentary evidence.

50.—Documentary evidence must be put in and read, or by consent taken as read.

Every document put in evidence shall be marked by the Court at the time, and shall be retained by the Court and except by leave of the Court shall not be delivered out of Court until seven days after judgment and not then if any application for a rehearing shall have been made.

#### WITNESSES.

51.—Where it is shown to the Court that any person within the particular jurisdiction is likely to give material evidence, and will not voluntarily attend, the Court shall issue a summons for his attendance. In the case of a witness outside the jurisdiction the Court may request the competent authority to order or secure the attendance of such witness. Summons.

52.—If any person so summoned does not obey the summons, and does not excuse his failure to the satisfaction of the Court, then (after proof of the service of the summons) the Court may issue its warrant to compel his attendance. Warrant after summons.

53.—Where it is shown to the Court that any person within the particular jurisdiction is likely to give material evidence and that it is probable he will not attend unless compelled to do so, then instead of issuing a summons the Court may issue a warrant in the first instance. Warrant in first instance.

54.—If any witness within the particular jurisdiction refuses to answer any question put to him and does not excuse his refusal to the satisfaction of the Court, then the Court may, by warrant, commit him to prison. Refusal to answer.

55.—When any action is pending and a party thereto shall satisfy the Court that it is likely that a material witness will be unable to be present at the trial the Court may make an order, notice of which shall be served on the other party or parties, for the examination of such witness before the Court at any time before the trial. Examination of witness before trial.

The deposition of the witness shall be taken down in writing and may be used at the trial. If the Court shall be satisfied at the trial that the witness is able to be present the deposition shall not be used.

#### JUDGMENT.

56.—Decisions and judgments shall be delivered or read in open Court. Publicity.

57.—If the judgment of the Court is reserved at the hearing, parties to the suit shall be summoned to hear judgment, unless the Court at the hearing state the day on which judgment will be delivered, in which cases no summons to hear judgment shall be issued. Summons to hear judgment.

58.—All parties shall be deemed to have notice of any decision or judgment, if the same is pronounced at the hearing. Notice to parties of judgment.

All parties duly served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.



Judgment in writing.

59.—Every judgment or order whether final or interlocutory shall be duly put into writing and signed and sealed by the Court.

Date of judgment.

60.—Every judgment or order shall bear the date of the day on which it is pronounced.

Office copies.

61.—Any party to a suit is entitled to obtain a copy of any judgment or order made therein and such copy shall be duly certified under the Seal of the Court.

Instalments.

62.—A decree or order may direct that money directed to be paid by any person be paid by such instalments as the Court thinks fit.

How payment to be made.

63.—All money directed by any decree or order to be paid by any person shall be paid into Court in the suit or matter, unless the Court otherwise directs.

Detention or security after order.

64.—A person directed by a decree or order to pay money, or do any other act, may in the discretion of the Court be detained in safe custody or released upon security but no defendant against whom judgment has been given shall be released except by special leave of the Court, until he gives bail or security for his further appearance with a surety or sureties to the satisfaction of the Court in the case of an order to pay money in a sum equal to the full amount of the judgment debt or in the case of an order to do any other act in such sum as the Court shall think fit.

If being called upon to appear by order of the Court or in answer to a judgment summons the defendant fails to appear his surety or sureties shall forthwith pay into Court the whole amount of such security and in default thereof shall be liable to be arrested and kept in custody until the same is paid.

Execution against goods.

65.—Where the decree or order is one directing payment of money, and the person directed to make payment refuses or neglects to do so according to the exigency of the decree or order, the person prosecuting the decree or order shall be entitled to apply to the Court for execution against the property of the disobedient person.

#### STAY OF EXECUTION.

Power to stay pending other suit.

66.—The Court may, if under the circumstances of any case it thinks fit, on the application of any party and on such terms as seem just, stay execution of a decree or order (a) pending another suit in the same or any other Court, (b) pending an appeal or rehearing, or (c) for any other good and sufficient cause.

#### SEIZURE AND SALE OF PROPERTY.

Warrant of execution against property.

67.—The Court shall, unless it sees good reason to the contrary, on the application of the person prosecuting the decree or order, issue under the Seal of the Court a warrant of execution, directed to such officer or person as the Court shall think fit, who shall be thereby empowered to levy the money ordered to be paid (with the expenses of the execution) by seizure and sale of the property of the disobedient person.

How property to be dealt with.

68.—The Court shall hold any property seized as security for the amount directed to be levied by the execution, or so much thereof as is not otherwise levied, for the benefit of the person prosecuting the decree or order.

69.—The sale of property seized in execution shall be conducted under the order of the Court at such time and in such manner as the Court shall order. Sale.

70.—Every warrant of execution shall be returned by the person to whom it is directed, who shall certify thereon how it has been executed. Return of Warrant.

71.—In or on every warrant of execution the Court shall cause to be inserted or indorsed the sum of money adjudged ; and if the person against whose property execution is issued before actual sale of the property, pays or causes to be paid into Court, the sum of money adjudged, together with all expenses, the execution shall be superseded and the property seized shall be discharged and set at liberty. Payment before Sale.

#### SUMMONS TO JUDGMENT DEBTOR.

72.—Where a decree or order directing payment of money remains wholly or in part unsatisfied (whether a warrant of execution has issued or not), the person prosecuting the decree or order may apply to the Court for a summons, requiring the person by whom payment is directed to be made to appear and be examined respecting his ability to make the payment directed, and the Court shall, unless it sees good reason to the contrary, issue such a summons. In what cases.

73.—On the appearance of the person against whom the summons is issued, he may be examined by or on behalf of the person prosecuting the decree or order, and by the Court, respecting his ability to pay the money directed to be paid, and for the discovery of property applicable to such payment, and as to the disposal which he may have made of any property. Examination.

He shall be bound to produce all books, papers, and documents in his possession or power relating to property applicable to such payment.

Whether the person summoned appears or not, the person prosecuting the decree or order, and all other witnesses whom the Court thinks requisite, may be examined respecting the matters aforesaid.

The Court may, if it thinks fit, adjourn the hearing of the summons from time to time, and require from the person summoned such security for his appearance at the adjourned hearing as seems fit or detain him in custody, there to remain until the adjourned hearing, unless sooner discharged.

74.—Any person so imprisoned, who pays the money by the decree or order directed to be paid, or the instalments thereof payable, shall be discharged out of custody. Discharge from prison on payment.

75.—On the hearing of any such summons as aforesaid, the Court, if it thinks fit, may rescind or alter any decree or order previously made against him as to the manner of payment and make any further or other order, either for payment forthwith, or by any instalments, or in any other manner as the Court thinks reasonable and just. Rescinding or variation of order for payment.

#### GARNISHEE PROCEDURE.

76.—A party, after judgment has been given against him, may be examined before the Court as to any debts due, owing, or accruing Proceedings.

to him from any persons, and if any such person being within the jurisdiction of the court be then present, he may be required forthwith to show cause why he should not be ordered to pay into Court for the benefit of the judgment creditor the amount of such debt or such portion of it as will satisfy the judgment debt, and the Court may make an order for the payment of such debt or such portion as will satisfy the judgment debt, and such order may be enforced in the same manner as any other order of the Court. A receipt shall be given for the same to the person paying the same, which shall be a sufficient discharge and acquittance for such amount as between the person paying and the judgment debtor.

Summons to  
Garnishee.

77.—A party who has obtained a judgment or order for the recovery and payment of money, or a defendant who has obtained such judgment against the plaintiff, may at any time lodge with the Chief Clerk a petition stating that the judgment or order is unsatisfied, and that a third person (hereafter alluded to as the garnishee) is indebted to the judgment debtor, and is within the jurisdiction of the Court as regards such debt, and the Court shall thereupon issue a summons to the garnishee at the suit of the judgment creditor for the amount due by the garnishee to the judgment debtor or such portion of it as may be sufficient to satisfy the judgment or order.

Service.

78.—The summons shall be personally served on the garnishee, and shall have the effect of an order restraining him from parting with or disposing of any debt due, owing, or accruing from him to the judgment debtor and the garnishee shall appear in Court on the day named in the summons to show cause why he should not be ordered to pay into court the whole or part of his debt in manner above provided.

#### EXECUTION OUT OF THE JURISDICTION.

By request.

79.—Where it is desired to levy execution outside the jurisdiction, the Court may request the competent Authority to levy such execution and any money produced by such execution shall be received by the Court and dealt with as justice shall require.

#### ARREST.

In what cases.

80.—Where the decree or order is one directing some act to be done other than payment of money, and the person directed to do the act refuses or neglects to do it according to the exigency of the decree or order, the person prosecuting the decree or order shall be entitled to apply to the Court for a warrant of arrest against the disobedient person.

Warrant.

81.—The Court shall, unless it sees good reason to the contrary, on the application of the person prosecuting the decree or order, issue, under the Seal of the Court, a warrant of arrest directed to a proper officer who shall be thereby empowered to arrest the disobedient person, and detain him in custody until further order.

#### SUITS BY AGENTS.

In whose name  
and how proceedings  
to be taken.

82.—Every person doing any act or taking any proceeding in the Court as plaintiff, or otherwise, must do so in his own name and not otherwise, and either by himself or by counsel or by an agent thereunto lawfully authorized in writing.



83.—Where such act is done or proceeding taken by an agent, the power of attorney, or instrument constituting the authority or an authenticated copy thereof must be filed in the Court before or at the commencement of the proceedings. Filing of power of attorney.

*Proceedings by or against Partnerships.*

84.—(1.) Persons claiming or being liable as partners may sue or be sued in the firm name. Firm name.

(2.) Where partners sue in the firm name, they must, on demand in writing on behalf of any defendant, forthwith declare the names and addresses of the partners. Partner's names to be declared.

(3.) Otherwise, all proceedings in the suit may, on application, be stayed on such terms as the Court thinks fit. Stay of proceedings.

(4.) When the names of the partners are so declared, the suit proceeds in the same manner, and the same consequences in all respects follow, as if they had been named as the plaintiffs in the petition.

(5.) All subsequent proceedings, nevertheless, continue in the firm name.

(6.) Where partners are sued in the firm name, the petition must be served either on one or more of the partners within the jurisdiction, or at the principal place of the partnership business within the jurisdiction on some person having then and there control or management of the partnership business. Service.

(7.) Where one person, carrying on business in the name of a firm, apparently representing more persons than one, is sued in the firm name, the petition may be served at the principal place of the business within the jurisdiction on some person having then and there control or management of the business.

(8.) Where partners are sued in the firm name, they must appear individually in their own names. Appearance.

(9.) All subsequent proceedings, nevertheless, continue in the firm name.

(10.) Where a person, carrying on business in the name of a firm, apparently representing more persons than one, is sued in the firm name he must appear in his own name. Must appear in own name.

(11.) All subsequent proceedings, nevertheless, continue in the firm name.

(12.) In any case not hereinbefore provided for, where persons claiming or being liable as partners sue or are sued in the firm name, any party to the suit may, on application to the Court, obtain a statement of the names of the persons who are partners in the firm, to be furnished and verified by evidence or otherwise, as the Court thinks fit. Statement of names may be obtained.

(13.) Where a judgment is against partners in the firm name, execution may issue :— Execution.

- (i) Against any property of the partners as such ; and
- (ii) Against any person who has admitted in the suit that he is a partner, or who has been adjudged to be a partner ; and
- (iii) Against any person who has been served in the suit as a partner, and has failed to appear.

(14.) If the party who has obtained judgment claims to be entitled to issue execution against any other person, as being a

partner, he may apply to the Court, for leave to do so ; and the Court if the liability is not disputed, may give such leave, or if it is disputed may order that the question of the liability be tried and determined as a question in the suit, in such manner as the Court thinks fit.

#### SERVICE.

How to be made.

85.—Service of a petition, notice, summons, decree, order, or other document of which service is required by these rules, or according to the course of the Court, shall be made by an officer of the Court, unless in any case the Court thinks fit otherwise to direct ; and service shall not be valid unless it is made under an order of the Court (in writing under the Seal of the Court), which may be either indorsed on or subscribed or annexed to the document to be served.

Personal service.

86.—Unless in any case the Court thinks it just and expedient otherwise to direct, service shall be personal,—that is, the document to be served shall, together with the order for service (indorsed, subscribed, or annexed), be delivered into the hands of the person to be served.

Other service.

87.—Where it appears to the Court (either with or without any attempt at personal service) that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either.

- (i) by delivery of the document to be served together with the order for service to some agent, within the particular jurisdiction, of the person to be served, or to some other person within the particular jurisdiction through whom it appears to the Court there is reasonable probability that the document and order served will come to the knowledge of the person to be served ; or
- (ii) by advertisement in some newspaper circulating within the particular jurisdiction ; or
- (iii) by notice put at the Court, or at some other place of public resort within the particular jurisdiction.

#### COMPUTATION OF TIME.

Days.

88.—Where by these Rules, or any special order, or the course of the Court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the computation of such limited time does not include the day of such date or of the happening of such event, but commences at the beginning of the next following day, and the act or proceeding must be done or taken at the latest on the last day of such limited time according to such computation.

Expiry of time.

89.—Where the time for the doing of any act or the taking of any proceeding expires on a Sunday or on any day upon which the offices of the Court are closed to business, the act or proceeding shall be considered as done or taken in due time if done or taken on the next day on which the offices of the Court are open to business.

#### DEATH OF PARTY OR OTHER CHANGE.

Change or transmission of interest or liability.

90.—Where, pending a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or

any party to the suit dies, or the suit is in any other way rendered defective or incapable of being carried on, any person interested may, on motion *ex parte*, obtain from the Court such order as is requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

But it shall be open to any person served with such an order within such time, not exceeding fourteen days as the Court in the order directs, to apply to the Court by motion to discharge such order.

### DISTRESS FOR RENT

91.—An application for a warrant for distress for rent shall be made out in English and Chinese and shall be signed by the owner of the property or his duly authorised agent. Application.

92.—The application shall state : Particulars.

- (i) The name and address of the owner or agent.
- (ii) The name of the tenant.
- (iii) A description of the property on which distress is sought.
- (iv) The amount of rent owing.
- (v) The period for which such rent is payable.
- (vi) The date on which such rent became payable.

93.— On the application being filed the Court shall issue a distress warrant and seals for the sealing up of the premises. Issue.

94.—The warrant and seals shall be handed to the owner or his representative who shall deliver the same to the officer in charge of the Police Station of the district in which the premises are situate. The owner or his representative shall proceed with a police officer from the said Station to the premises and if the amount of the rent specified in the warrant is not paid the police officer shall seal up the premises and the premises shall remain sealed until further order of the Court. Execution.

95.—If the amount of rent specified in the warrant is paid or a settlement between the parties arranged before the premises are sealed the warrant and seals shall be returned to the Court by the police officer. Payment before Sealing up.

96.—If the amount of rent specified in the warrant is paid or a settlement between the parties arranged after the sealing up the seals shall not be removed without an order of the Court. The Court shall issue such an order on the filing of a notice by the owner that the rent has been paid or a settlement arranged. A tenant desiring an order for the removal of seals shall apply by motion in open Court and shall give one clear day's notice to the owner or his agent of his application. Payment after Sealing up.

97.—If the amount of the rent specified in the warrant be not paid within 14 days after the affixing of the seals, the owner or his agent may file at the Court a written application for an order for the sale by auction of the contents of the premises. On such application the Court shall issue such an order and shall send the same direct to auctioneers appointed by the Court and the proceeds of the sale shall be paid into Court. The Chief Clerk shall out of such proceeds, if the same be sufficient, pay to the owner or his agent the amount of the rent specified on the warrant and all Court fees, if any, paid and shall pay the surplus, if any, to the tenant. Sale.



*Probate, Administration, Receivers and Bankruptcy.*

Procedure.

98.—All proceedings instituted.

- (i) For the proving of a Will,
- (ii) For an order for the administration of the property of a deceased person subject to the jurisdiction of the Court,
- (ii) For the appointment of a Receiver,
- (iv) In bankruptcy,

shall be commenced by petition in accordance with Rule 1, but such causes shall be entered by the Chief Clerk on a list separate from the general hearing list, and shall be heard by the Court on the first convenient day.

REHEARING.

Notice of motion.

99.—Any party aggrieved by a decision of the Court may file with the Chief Clerk a notice of motion for a rehearing. Such notice shall set forth generally the grounds on which the motion is based and shall be filed ordinarily within 7 days after the original decision has been given but afterwards by special leave of the Court.

Power to order.

100.—On application by an aggrieved party, or of its own motion, the Court may order a rehearing of an action, or of any part thereof, or of any question of law or fact involved therein, upon such terms as to the Court may seem just.

APPEAL.

101.—An appeal to the competent Court of Appeal shall lie from every final judgment and every interlocutory order made by the Court of First Instance, and shall be preferred by filing with the Chief Clerk a notice of appeal. Such notice shall set forth the grounds on which the appeal is based and shall be filed within 20 days after the original decision was given, but afterwards by special leave of the Court of Appeal.

102.—The procedure relating to trials in Courts of First Instance applies, *mutatis mutandis*, to trials of appeals.

103.—The Court of Appeal may :

- (a) dismiss the appeal or cross-appeal or both.
- (b) quash such part of the Judgment or order of the Court of First Instance as is attacked and give fresh judgment in respect thereof.
- (c) order a new trial, or
- (d) make any other order.

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**All fees in the Shanghai Provisional Court are increased by 50% from March 1st, 1927, except *Petitions for Record, Administration of Estate and Transfer of Title Deeds, Shares, etc.*, and fees charged for various forms of petitions, applications, etc.**

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## THE SHANGHAI PROVISIONAL COURT—COURT FEES.

According to the Notification of the President of the Shanghai Provisional Court, dated January 5th, 1927, every document filed with the Court, viz : petition, application, answer, power of attorney, etc., shall be written on a *special form* to be obtained in the Court upon payment of the following fee :

### Petitions—

Civil .. .. .	\$0.30
Criminal .. .. .	\$0.20

### Answers—

Civil .. .. .	\$0.20
Criminal .. .. .	\$0.20
Power of Attorney in Civil and Criminal cases ..	\$0.20
Petitions filed by or through official Yamens for handing over of judgment debt, property or persons .. .. .	\$0.10
For the paying into Court of a judgment debt, or installment of a judgment debt .. ..	\$0.10
Various applications filed with the Official Yamens	\$0.30
Security Bonds .. .. .	\$0.30
Personal Bonds .. .. .	\$0.30
Petitions relating to amicable settlement of cases	\$0.30

*As far as the Court Fees are concerned the following fees of the former Mixed Court are provisionally in force until further order :*

Petitions for Record .. .. .	\$ 2.50	
Applications for Injunction .. ..	\$30.00	
Applications for Transfer of Shares, Title-Deeds, etc. .. .. .	\$30.00	} If no protest is lodged—one half of the fee is returnable on application.
Applications for Probate of Will or Letters of Administration .. ..	\$30.00	

The Filing and Hearing Fees in force in the former Mixed Court are abolished and the following scale of Trial, Execution, etc., fees is introduced :

### (a) Trial Fees :

Less than \$10 a fee of \$0.30 is to be charged.

More than \$10 and less than \$25 a fee of \$0.60 is to be charged.

More than \$25 and less than \$50 a fee of \$1.50 is to be charged.

More than \$50 and less than \$75 a fee of \$2.20 is to be charged.

More than \$75 and less than \$100 a fee of \$3 is to be charged.

More than \$100 and less than \$200 a fee of \$6 is to be charged.

More than \$200 and less than \$1,000 a fee of \$2 is to be additionally charged on every \$100; any amount less than \$100 is to be charged as \$100.

More than \$1,000 and less than \$2,000 a fee of \$25 is to be charged.

More than \$2,000 and less than \$4,000 a fee of \$32 is to be charged.

More than \$4,000 and less than \$6,000 a fee of \$42 is to be charged.

More than \$6,000 and less than \$8,000 a fee of \$55 is to be charged.

More than \$8,000 and less than \$10,000 a fee of \$70 is to be charged.

More than \$10,000—\$3 is to be additionally charged on every \$1,000; any amount less than \$1,000 is to be charged as \$1,000.

In case of Civil proceedings being instituted not included in the foregoing list a Trial Fee of \$3 is to be charged.

All fees can be paid in taels, coppers, and foreign currencies, according to the market rate in dollars (big money).

*(b) Fees for Execution :*

Less than \$25	.. ..	Fee \$0.30
More than \$25 and less than \$50	.. ..	„ \$0.50
„ „ \$50 „ „ „ \$100	.. ..	„ \$1.00
„ „ \$100 and less than \$250	.. ..	„ \$1.80
„ „ \$250 and less than \$500	.. ..	„ \$2.50
„ „ \$500 and less than \$1,000	.. ..	„ \$3.50
„ „ \$1,000—\$1.50 is to be additionally charged on every \$1,000; any amount less than \$1,000 is to be charged as \$1,000.		

*Note :* The above fees are only chargeable where an auction is held, if no auction is held, half of the above rates are chargeable.

*(c) Fees charged for receipt of documents :*

In case of any judgment copy, summons, and documents relating to cases being sent with a Runner, a fee of \$0.10 is charged on every document. If such is sent for more than 10 Li, an additional 5 cents is charged for every 5 Li.

Should it be impossible for the Runner to return within a day, a fee of \$0.50 per day is additionally charged for his board and lodging.

The car fare borne by the Runner when any document is sent, and the Postage Fees if any document is forwarded by mail is reckoned and paid according to the actual amount of expenses incurred.

*(d) Fees for Copying :*

For every 100 characters, a fee of \$0.10 is charged; less than 100 characters is to be charged as 100 characters.

*(e) Translation Fees :*

For every 100 characters, a fee of from 0.20 to 0.40 is charged at a decision made by the Shanghai Provisional

Court; less than 100 characters is to be charged as 100 characters.

*(f) Fees for Notices in the Press, Postage Fees, and Telegrams :*

If Notices in periodicals are to be inserted in connection with cases, or if anything is forwarded by mail or if telegrams are sent, fees are paid in accordance with the stated prices. Charges, are to be made according to the actual expenses.

If any expenses are to be made by the Judges and Clerks of the Court in connection with conducting, investigations, charges are to be made in the same manner as for the Official Runners and such expenses are to be borne by the parties to the action.

*(g) Fees for the attendance in Court of Witnesses and Appraisers :*

For every attendance in Court of a Witness, a fee of 0.50 is to be charged.

For every attendance in Court of an Appraiser or an Interpreter, a fee of more than 0.50 and less than \$5.00 will be charged by the Court, which decides each time the actual amount of the fee to be paid.

If any Witness, Appraiser, or Interpreter attending the trial is retained for a period of more than a day, a Travelling Fee of \$0.50 is to be paid to him for each day besides the attendance fee. The Court will decide each time the actual amount to be charged for the Appraisers and Interpreters which shall be more than \$0.50 and less than \$5. The Travelling Fees borne by the Witnesses, Appraisers and Interpreters are reckoned and paid according to the actual expenses incurred.

*Note I.*—If the above mentioned amounts are increased in various provinces of the Republic of China, the same are to be accordingly increased in the Shanghai Provisional Court.

If any application is made in *forma pauperis* and granted by the Court, the Trial Fee and the Officials' Fee and any money to be paid in advance can temporarily be exempted from payment. Exemption may also be granted in the event if a security is required for expenses in connection with the action. This refers only to expenses in connection with Civil causes.

Regarding the expenses in Criminal causes, fees are only charged for the Notices in the Press, Postal and Telegraphic dispatches, Witnesses, Appraisers, Interpreters, and for the Judges and Clerks conducting investigations. These fees are borne by the defendants. Fees for copying and for Interpreters are to be paid by the applicants.

Fees charged in both Civil and Criminal Cases filed together are paid in the same manner as in Civil cases. If the exact amount of the costs in the Criminal case is not designated by the Court, then the Prosecutor has to calculate the costs and the Court will order the collection of the amount so calculated.

*Note II.*—Subpoena—a fee of 0.50 cents is to be charged for each Subpoena. Forms for Subpoenas are obtainable in Court upon application.

*Appeal.*—In Case of Appeal in Civil cases 40 per cent. of the original fees paid in the Court of First Instance are to be additionally paid at the filing of the notice of Appeal. No fee for Appeal is charged in Criminal cases.



# SELECTED DOCUMENTS RELATIVE TO THE METHODS AND PROCEDURES FOR THE TRIAL OF MIXED CASES

*Translated and published by the Commission on Extraterritoriality, Peking.*

*NOTE.—Mixed cases are tried according to the provisions of various treaties concluded with foreign powers, or according to various decrees issued by the Chinese Government. These treaties and decrees are, however, scattered all around in various kinds of documents. It is rather inconvenient for us to find the material we want when we need it. Thus we collect all the important documents and, after a careful analysis, put them under different sections according to their nature. For the convenience of the reader, we mention the original sources referred to in this little book under each section.*

## 1.—Limits of mixed cases.

The mixed cases must be those in which an alien, whose country of origin enjoys the right of extraterritoriality in China is a party against a Chinese as the other party. By the word "alien," we mean only a real foreigner. Any Chinese who, while being a compradore or a partner in a foreign company, has brought a suit against a Chinese common citizen or a Chinese merchant, cannot be treated in the same way as an alien is treated in a mixed case, because his action cannot be regarded as a mixed case. Consequently, neither the consul, nor the manager of the foreign company can interfere with, or say anything about, the case.

*NOTE.—In the first year of Emperor Kwang Shi, the Tsung Li Yamen has issued a decree, ordering that a Chinese who is a compradore of a foreign company, and who brings a suit against another Chinese, will be tried by the Chinese Officers.*

## 2.—Courts which have their jurisdiction over mixed cases.

### (a) Court of first instance.

A Chinese citizen who is a defendant in a mixed case, will, according to the provisions of treaties, be tried by the magistrate of the district in which he resides. If the alien brings his suit in the courts of various degrees, the respective courts will hear his case. The courts are, however, independent organizations. An alien may bring a suit against a Chinese thereto, but the consul of his own country cannot be permitted to attend the court and watch its proceedings. If he demands strongly that he will be permitted to do so, the court may dismiss the case and leave it to the district magistrate to hear and determine.

*NOTE.—See the provisional regulations for the trial of mixed cases which were promulgated by the Ministry of Justice on November 26, the First Year of the Chinese Republic.*

### (b) Court of final appeal.

If a party does not obey the decision of the district magistrate by whom the case has been tried, the office of the Provincial commissioner of foreign affairs appointed by the Ministry of Foreign

Affairs of the Central Government, will be the court of appeal, receiving his petition of appeal.

*NOTE.—See decree No. 78, Article 2 of "The Methods and Procedures of Mixed Cases." This decree was issued by the Ministry of Justice on March 6, the Second Year of the Chinese Republic.*

### 3.—Territorial Jurisdiction.

The Office of the Magistrate in whose district the mixed case has taken place, is the legal organ which will hear the pleadings of both sides in the controversy. Thus the said case cannot be transferred to the Office of any other District Magistrate. If it is really inconvenient for the Magistrate of the original District to hear the case, the Ministry of Foreign Affairs may consult with the higher authority of the magistrate, asking its permission to let him have the right of using the office-building of another district magistrate for the hearing of the case.

*NOTE.—See the letter (No. 1720) written by the Ministry of Justice to the Ministry of Foreign Affairs on December 8, the Second Year of the Chinese Republic. In this letter, it is clearly stated that a mixed case ought to be tried by the magistrate of the district in which the controversy has taken place.*

### 4.—The qualification of judges.

If a district magistrate legally responsible for the trial of mixed cases, is not a graduate of the school of law, or of political science, he must either ask the chief justice of district court in the same district or a district nearby to appoint a judge, or ask the court or procuratorate of his own district to appoint an assistant judge, to help him to hear and try the cases.

*NOTE.—See Article 1, of "The Methods and Procedures of Mixed Cases."*

The provision relating to the qualification of judge, mentioned above, will also be applied to the Trial of mixed case of appeal.

*NOTE.—See Article 2, Section 2, of "The Methods and Procedures of Mixed Cases."*

### 5.—Process of lawsuits.

When a district magistrate, or a Commissioner of Foreign Affairs, appointed by the Ministry of Foreign Affairs, hear and try a mixed case, the processes they adopt will be just the same as the processes of a common lawsuit except when some measures in the process are unpracticable in the administrative offices, or when some points of the process are in conflict with some provisions of a treaty.

*NOTE.—See Article 3 of "The Methods and Procedures of Mixed Cases."*

### 6.—Petition-papers and costs.

In a mixed case which is civil in its nature, if a foreign merchant directly brings a suit against a Chinese, he must buy the petition-papers and pay the costs of lawsuits fixed by law. If a consul transfers a civil case to the Chinese Court, the plaintiff does not need to buy the petition-papers. But he must pay the costs according to the regulations of the Court. If the consul does not agree with this condition, the district judge will, after

having consulted with him, ask him to notify the plaintiff that he must secure a guarantee and that the guarantee must assure the Court that, in case of failure in the lawsuit, the plaintiff or his guarantee will pay the costs as prescribed by law. In this condition, the plaintiff may not pay the costs beforehand.

*NOTE.—See the opinions given by the Ministry of Justice to the high court of Shantung on June 1st, the Fourth Year of the Chinese Republic, and the order issued by the same to the high court of Chihli on June 17, the Ninth Year of the Chinese Republic.*

7.—Presence of consuls in the Court to watch the proceeding of trial.

In a mixed case, the officer of the country to which the defendant belongs, will hear and try the case; while the officer of the country to which the plaintiff owes his allegiance, will have the right of being present in the Court to watch the proceeding of the trial.

*NOTE.—See the Chefoo Treaty between England and China in 1876 and the supplementary Articles of the Sino-American Treaty concluded for the second time in 1880.*

When a consul is present in the Court to watch the proceeding for the trial of a mixed case, he sits, according to the general custom, behind the Chinese officers without saying a word. If he has any opinion, he may tell the Chinese officer after the trial when the latter has withdrawn himself from the Court.

*NOTE.—See the letter (No. 1655) written by the Ministry of Justice to the Ministry of Foreign Affairs on November 6, the Second Year of the Chinese Republic. In this letter, it is stated that, the Ministry of Foreign Affairs shall negotiate with the British Minister on the basis of the Chefoo Treaty between England and China and of the general custom for the consul to watch the proceeding in the Court.*

8.—How lawyers fulfil their duties ?

Lawyers may fulfil their duties in an ordinary Court or in a special Court as prescribed by the present Provisional Regulations of Lawyers. But wherever there is no Court established, lawsuits will be tried by the district magistrates without the function of lawyers. Thus when mixed cases are being tried by the respective district magistrates, no lawyer will be permitted to attend the trial and perform his legal functions.

*NOTE.—See the decree (No. 41) issued by the Ministry of Justice on February 14, the Second Year of the Chinese Republic and the decree (No. 2764) issued by the Ministry of Justice to the High Court of Kiangsu on April 4, the Sixth Year of the Chinese Republic.*

9.—How will the decisions of the Court be carried out ?

When the decisions of a mixed case has been rendered by the district magistrate, it will, after it has become final and conclusive, be carried out by him, whether the plaintiff will appeal to a higher court or not. If the district magistrate thinks it necessary to co-operate with the Commissioner of Foreign Affairs in carrying out his decision, he may do so likewise.

*NOTE.—See the letter (No. 994) written by the Ministry of Justice to the Ministry of Foreign Affairs. In this letter, it is stated that it is rather convenient for the district magistrate to carry out the decisions of mixed cases.*



## REGULATIONS RELATING TO CIVIL AND CRIMINAL CASES INVOLVING SUBJECTS OF NON-EXTRA- TERRITORIAL POWERS

(Ordinance No. 9 promulgated on May 23rd in the 8th Year of the Republic, 1919, amended by Ordinance 24 promulgated on October 30th in the 9th Year of the Republic, 1920).

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—Civil and criminal cases involving subjects of non-extraterritorial powers shall be tried and adjudicated in accordance with the provisions of these Regulations.

**Article 2.**—District Courts, Divisions of District Courts attached to the Judicial Tribunals of the Special Districts, or such judicial Tribunals as have the jurisdiction of a District Court shall be the courts of first instance for cases provided in Article 1, except cases of crimes defined in Sub-divisions (3) and (4) of Article 6 of the Draft Code of Criminal Procedure. In a locality where there is no District Court or Division of District Court, the proper official shall transfer such cases to the neighbouring District Court or Division of District Court for trial and adjudication. In the frontier districts where such transfer cannot be effected, the proper officials shall petition the Ministry of Justice for direction.

**Article 3.**—Where subjects of non-extraterritorial powers in cases provided by Article 1 are to be detained or imprisoned in the execution of sentences in criminal cases, they shall be kept in the proper modern prisons. In a locality where there is no modern prison, a proper house may take its place.\*

**Article 4.**—In the absence of express provisions in these Regulations relating to procedure, the Codes of Civil and Criminal Procedure when promulgated and other laws and ordinances shall apply.

**Article 5.**—Amendments to these Regulations may be made by ordinance upon petition of the Minister of Justice to the President.

**Article 6.**—The provisions of these Regulations shall come into force on the day of promulgation.

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\*The object of Article 3 of these Regulations which provides that subjects of non-extraterritorial powers who are to be detained in civil cases or are defendants in criminal cases shall be kept in modern prisons is to secure benefit for the subjects of such powers, as the modern prisons in Peking and the provinces are better than detention houses. Hence such special provisions were made. Afterwards, in order to avoid misunderstanding, the courts were instructed that, when defendants in civil cases who are subjects of non-extraterritorial powers are to be detained, some clean rooms may be chosen in a detention house for the purpose, or a temporary detention house may be made of some proper house; and that, if there are objections to keeping such subjects as defendants in criminal cases in modern prisons, they may be kept in detention houses. (See Instructional Order of the Ministry of Justice No. 842, dated November 25, in the 9th Year of the Republic and Order (upon Petition) of the Ministry of Justice No. 1060, dated November 23, in the 11th Year).

## CASES OF SPECIAL CRIMES COMMITTED BY SUBJECTS OF NON-EXTRATERRITORIAL POWERS

*Translated and published by the Commission on Extraterritoriality, Peking.*

The jurisdiction over a military officer of a non-extraterritorial power who has committed a crime in the Chinese territory shall belong to the court ; such case shall not be transferred to a military tribunal. A person who has committed an offence defined by the Regulations governing Military Criminal Cases shall receive the same treatment as Chinese subjects and be subject to the jurisdiction of a military tribunal. If a court finds that he is not guilty of an offence defined by these Regulations, the case, no matter whether it has been adjudicated by the military organ or not, shall, for the purpose of remedying the situation, be tried and adjudicated again by the court.\*

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\*See the telegram of the Ministry of Justice to the High Court of the Special District of the Eastern Provinces, dated February 23, in the 10th Year of the Republic and the Order (upon Petition) of the Ministry of Justice, No. 9830, dated December 19, in the 12th Year.

## FORMS USED BY RUSSIAN LITIGANTS

*Translated and published by the Commission on Extraterritoriality, Peking.*

Forms used in litigations are usually issued by order of the Ministry of Justice. For the convenience of Russians, however, they are allowed to use in litigations their own papers ; provided that they shall pay the fees for the forms prescribed by the regulations. It is also at their option to use the forms prescribed by the Ministry of Justice.\*

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\*See Instructional Order of the Ministry of Justice No. 1322, dated October 14, in the 10th Year of the Republic.

# **A GUIDE WITH REFERENCE TO CIVIL AND CRIMINAL CASES INVOLVING SUBJECTS OF NON-EXTRA- TERRITORIAL POWERS**

**(Instructional Order of the Ministry of Justice to the Courts  
No. 792, dated October 23, in the 8th Year  
of the Republic, 1919.**

*Translated and published by the Commission on Extraterritoriality, Peking.*

(1) Cases which in accordance with Article 1 of the Regulations relating to Civil and Criminal Cases Involving Subjects of Non-extraterritorial Powers are subject to the jurisdiction of Chinese courts are as follows :

- (a) All cases of crimes committed by subjects of non-extraterritorial powers.
- (b) Civil cases between Chinese and subjects of non-extraterritorial powers.
- (c) Civil cases between subjects of non-extraterritorial powers.

Civil cases, where a subject of a non-extraterritorial power is the defendant and a subject of an extraterritorial power is the plaintiff, or, where the former is the plaintiff and the latter is the defendant, shall still be tried and adjudicated in accordance with the treaties between China and such extraterritorial powers by the consul of the power of which the defendant is a subject.

(2) With regard to civil and criminal cases involving subjects of non-extraterritorial powers arising in a District where there is no District Court or Division of District Court, the proper High Court or Judicial Tribunal shall instruct the proper officials of the Districts beforehand that, if such cases arise, they shall be transferred promptly to the proper District Court or Division of District Court, and that, if the case is a civil one, he shall tell the parties to go to such court or division to wait for trial and adjudication.

(3) With regard to the neighbouring District Court or Division of District Court mentioned in Article 2 of the Regulations relating to Civil and Criminal Cases Involving Subjects of Non-extraterritorial Powers, if there are two or more District Courts in a province, the High Court of the province shall determine the jurisdictions of the District Courts, instruct the courts and the proper officials of the Districts to act accordingly, and send a report to this Ministry for record.

(4) Cases involving subjects of non-extraterritorial powers, except those the original jurisdiction over which belongs to a Local Court, shall be tried and adjudicated by a division of several judges.

(5) The chief official of the court, judicial tribunal or procuratorate shall be careful in selecting the judges and procurators for cases involving subjects of non-extraterritorial powers. He may distribute such cases not in accordance with the regulations relating



to the assignment of business of the judicial year and may assign them to those judges and procurators who are graduates from abroad as procurators in charge of criminal cases, judges who hear alone cases subject to the jurisdiction of a Local Court as a court of first instance, or Chief Judges of Divisions of High or District Courts. He shall appoint such judges and procurators beforehand and report them to the Ministry of Justice for record.

(6) An interpreter shall be secured in the trial of cases involving subjects of non-extraterritorial powers.\*

(7) If there is no competent judicial official in any court, judicial tribunal, or procuratorate as above referred to or if there is no proper interpreter in the locality, petition shall be sent to this Ministry for appointment.

(8) If there is in any court, judicial tribunal or procuratorate any case above referred to, the nationality of the parties and the subject-matter of the case shall be reported to this Ministry by telegraph.

(9) The cases above referred to shall be dealt with promptly.

(10) Foreign laws shall be applied in accordance with the Regulations relating to the Application of Laws. If there is any doubt, instruction shall be asked for from this Ministry by telegraph.

(11) Doubts and difficulties relating to cases involving subjects of non-extraterritorial powers shall be solved beforehand, and when necessary, instruction shall be asked for from this Ministry by telegraph.

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\*With regard to interpreters, Russians in Harbin sometimes wish, for sake of convenience, to be allowed to bring their own interpreters to court for the reason, as they state, that the interpreters of the courts do not interpret satisfactorily. Since there are not sufficient interpreters in the different courts and divisions in the Special District of the Eastern Provinces, the Ministry of Justice considers that, if the Russians are willing to bring their own interpreters to court, their request, there being no objection to it, may be granted. But, though the parties bring their own interpreters, the interpreter of the court shall also appear in court so as to check the interpretations. (See Instructional Order of the Ministry of Justice No. 1321, dated October 14, in the 10th Year of the Republic).

Documents and notices of the courts shall all be in Chinese. The Law of the Organization of the Judiciary contains express provisions to this effect. The documents or notices of the courts of the Special District of the Eastern Provinces to Russians shall, likewise, be in Chinese, provided that Russian translations may be annexed to them. In case of disagreement between the Chinese and Russian texts, the former shall prevail. Again, to a judgment sent to a Russian, the court shall, for his convenience, attach thereto a Russian translation of the judgment (in the narrow sense). The accusations and statements of a procurator in a criminal case, being of great importance to the defendant, shall, for his benefit, be interpreted to him in court by the interpreter of the court. (See Instructional Order of the Ministry of Justice No. 34, dated January 10, in the 10th Year of the Republic, Instructional Order of the Ministry of Justice No. 1323, dated October 14, in the 10th Year of the Republic; and Instructional Order of the Ministry of Justice No. 185, dated February 26 in the 10th Year of the Republic).

## THE ORDINANCE OF THE EXAMINATION FOR ADMISSION TO THE BAR

Ordinance No. 19, promulgated on October 18th, 1917.

*Translated and published by the Commission on Extraterritoriality, Peking.*

*Article 1.*—The examinations for admission to the bar and for entry to the judiciary may be given together.

*Article 2.*—The examination for admission to the bar consists of a preliminary examination and a final examination.

No person shall take the final examination unless he has passed the preliminary examination.

*Article 3.*—The chairman of the Commission for the Examination for Entry to the Judiciary and the examining, assistant examining and supervising commissioners shall also act in the same capacity in the examination for admission to the bar. The provision governing the Commission for the Examination for Entry to the Judiciary shall also apply.

*Article 4.*—Articles 2, 4, 9, 11, 30, 32, 33 and 34 of the Ordinance for the Examination for Entry to the Judiciary shall apply to the examination for admission to the bar.

*Article 5.*—The first part of the first paragraph of Article 7 and the first and third paragraphs of article 10 of the Ordinance of the Examination for Entry to the Judiciary shall apply to the examination for admission to the bar.

*Article 6.*—The provisions of this Ordinance shall come into force on the day of promulgation.

## REVISED PROVISIONAL REGULATIONS GOVERNING LAWYERS

(Order of the Ministry of Justice No. 773, dated August 13th, 1923)

*Translated and published by the Commission on Extraterritoriality, Peking.*

### CHAPTER I.—FUNCTIONS.

*Article 1.*—A lawyer may, with an authority given by a party in a case or under an order of the court, exercise functions defined by law in an ordinary court, and in accordance with the provisions of a special law, in a special judicial body.

A lawyer may be authorized by a party to be a witness to a contract or will or to make on the party's behalf a contract or any other legal document.

### CHAPTER II.—QUALIFICATIONS.

*Article 1.*—A lawyer shall have the following qualifications :

- (1) He is a male citizen of the Chinese Republic, twenty or more years of age.
- (2) He has passed the examination under the Ordinance of the Examination for Admission to the Bar or is qualified under these Regulations to be exempted from such examination.

*Article 3.*—A person may become a lawyer without examination if

- (1) he has the qualification to be a judicial official under the present laws or ordinances relating to the appointment of judicial officials,
- (2) the registration of his name in the Lawyers' Book has been cancelled at his request or under Article 13 or 14 after he became a lawyer under these Regulations, or
- (3) he has obtained a lawyer's certificate from the Ministry of Justice before the coming into force of these Regulations.

*Article 4.*—A person shall not be a lawyer if he

- (1) has been sentenced to imprisonment of the fifth degree or any higher punishment ; provided that he is not a political offender whose punishment has been completely executed or who has been excused and whose rights have been restored, or
- (2) has been adjudged bankrupt ; provided that the bankruptcy has not been discharged.

### CHAPTER III.—CERTIFICATE.

*Article 5.*—A person who has passed the examination shall receive a lawyer's certificate. A person who is qualified under sub-division 1 of Article 3 may apply for a lawyer's certificate in accordance with the provisions in these Regulations ; provided that he shall pay forty dollars as certificate fee and two dollars for stamp.



*Article 6.*—A person who applies for a certificate shall present an application, together with the certificate fee, to the Minister of Justice or to him through the chief procurator of a High Procuratorate, for its issuance.

The aforesaid application shall be accompanied by proper proofs of his qualification.

#### CHAPTER IV.—LAWYERS' BOOK.

*Article 7.*—When the Minister of Justice issues a lawyer's certificate, the name of the lawyer shall be registered in the General Lawyers' Book. Such book shall contain the following items :

- (1) The name, age, native place and address of the lawyer.
- (2) The number of the certificate.
- (3) The office of the lawyer.
- (4) The date of the registration.
- (5) Disciplinary punishment.

*Article 8.*—A High Court shall provide a Lawyers' Book.

*Article 9.*—A lawyer who has received a certificate may, by petition, choose a district within the jurisdiction of a High Court within which to practise ; provided that this rule shall not apply to the High Courts of Peking and Chihli.

The aforesaid choice shall be made by a petition together with his certificate, to the president of the High Court. After the certificate has been examined, an entry shall be made in the Lawyers' Book. The lawyer shall pay a registration fee of 20 dollars.

*Article 10.*—When a lawyer practises after the registration of his name in the book, his practice shall be confined to the jurisdiction of one District Court ; provided that by reason of necessity, he may petition the High Court by presenting a statement of the reason for permission to practise concurrently in the jurisdiction of another District Court.

This rule shall not apply if the case is an appeal to the High Court.

*Article 11.*—After a lawyer's name has been registered in the Lawyers' Book, he may practise in the Court of Cassation.

*Article 12.*—The president of the High Court shall report at once to the Minister of Justice and notify the courts within its jurisdiction of the name of the lawyer which has been registered in the book.

#### CHAPTER V.—DUTIES.

*Article 13.*—When a lawyer is practising, he shall not at the same time be an official or perform any public function with salary ; provided that this rule shall not prevent a lawyer from being a member of Parliament or of any local assembly, or a teacher in a government, public or private school, or performing any function specially ordered by a public office.

*Article 14.*—When a lawyer is practising, he shall not at the same time engage in any commercial business ; provided that this rule shall not apply to a business which is not inconsistent with his functions and is permitted by the bar association.

*Article 15.*—Unless he can prove the existence of a proper reason, a lawyer shall not decline to perform any function ordered by the court.

*Article 16.*—If a lawyer is entrusted with any contentious matter and is not willing to take it up, he shall notify the client. If he fails or delays to give the aforesaid notification, he shall pay damages for the loss resulting.

*Article 17.*—A lawyer engaged in a case shall not purchase the right which is the subject matter of contention between the parties.

*Article 18.*—A lawyer shall perform his functions honestly and faithfully. He shall not do any act of deceit towards the court or his client.

*Article 19.*—A lawyer shall not demand from his client any compensation under any pretence beyond the fee agreed upon.

Apart from the fee to which he is entitled, a lawyer shall not make use of his authority otherwise to do any juristic act beneficial to himself and injurious to his client.

*Article 20.*—A lawyer shall perform the matter entrusted to him with the care of a careful manager. If on account of his negligence or fault or ignorance of law or forms of document, he has caused loss to his client, he shall indemnify the latter.

*Article 21.*—A lawyer shall not purposely delay the progress of a case.

*Article 22.*—A lawyer shall not exercise his functions in the following cases :

- (1) where he has been consulted by the opposite party and has assisted him or accepted his authority.
- (2) which he has handled while a judge or procurator.
- (3) which he has handled as an arbiter according to the procedure of arbitration.

*Article 23.*—A lawyer shall establish an office in the locality where the court in which he practises is situate.

After he has established such office, he shall report it to the court.

#### CHAPTER VI.—BAR ASSOCIATION.

*Article 24.*—Lawyers shall establish a bar association in the locality where a District Court or a branch division of District Court attached to a branch High Court is situate. A lawyer shall not practise unless he is a member of the association.

*Article 25.*—A bar association, shall be under the supervision of the procurator of the District Procuratorate of the locality in which the association is situate or the supervising procurator of the branch High Procuratorate.

*Article 26.*—A bar association shall have one president and may have a vice-president.

*Article 27.*—A bar association shall hold a general meeting every year on a day previously fixed and may hold extraordinary general meetings.

*Article 28.*—A bar association may have regular councilmen.

*Article 29.*—A bar association shall pass regulations of the association to be presented by the chief procurator of the District

Procuratorate through the chief procurator of the High Procuratorate to the Minister of Justice for approval.

*Article 30.*—The regulations of a bar association shall provide for the following matters :

- (1) Method of election and the functions of its president, vice-president and regular councilmen.
- (2) Method of discussion in the general meeting or the meeting of the regular councilmen.
- (3) Means of maintaining the morality of the lawyers.
- (4) The highest rate for lawyers' fees.
- (5) Other matters necessary for carrying on the business of the association.

*Article 31.*—A bar association shall report at once the following matters to the chief procurator of the District Procuratorate of the locality where the association is situate :

- (1) The matter of the election of the president, vice-president and regular councilmen.
- (2) The dates, time and places of the general meeting and the meetings of the regular councilmen.
- (3) Matters proposed and passed in meetings.

After he has received the aforesaid report, the chief procurator of the District Procuratorate shall make a report to the Minister of Justice through the chief procurator of the High Procuratorate.

*Article 32.*—A bar association shall not propose or pass any matter except the following :

- (1) Matters provided for by law, ordinance, or the regulations of the association.
- (2) Matters inquired about by the Minister of Justice or a court.
- (3) Matters to be proposed to the Minister of Justice or a court relating to judicial affairs or the common interest of the lawyers.

*Article 33.*—The chief procurator of the District Procuratorate may appear in the general meetings of the association and the meetings of the councilmen at any time, and may order it to report the details of such meetings.

*Article 34.*—If a general meeting of the association or a meeting of the councilmen is contrary to law or ordinance or the regulations of the association, the Minister of Justice or the chief procurator of the High Procuratorate may declare its resolutions void or stop the meeting.

#### CHAPTER VII.—DISCIPLINARY PUNISHMENT.

*Article 35.*—If a lawyer does an act contrary to these Regulations or the regulations of the bar association, the president of the association shall, in accordance with the resolution of the councilmen's or the general meeting, petition the chief procurator of the District Procuratorate of the locality to submit his name for disciplinary punishment.

After the chief procurator of the District Procuratorate has received such petition, he shall forthwith petition the chief procurator of the High Procuratorate to institute proceedings for disciplinary punishment in the proper High Court.



The chief procurator of the District Procuratorate may petition by right of his office for the disciplinary punishment of a lawyer.

*Article 36.*—If the person upon whom a disciplinary punishment has been inflicted or the chief procurator of the High Procuratorate considers the decision wrong, he may petition the Minister of Justice for a reinvestigation.

*Article 37.*—Disciplinary punishments are of the following three kinds :

- (1) Advice and warning.
- (2) Suspension of functions (for a period of from one month to two years).
- (3) Cancellation of his name. (A person who has been punished by cancellation of his name shall not act as a lawyer again until four years have elapsed).

#### SUPPLEMENTARY PROVISIONS.

*Article 38.*—These Regulations shall cease to be in force upon the promulgation of the Law of Lawyers and the law governing the enforcement of such law.

*Article 39.*—The provisions of these Regulations shall come into force on December 1st of the 12th year of the Republic.

The Regulations of the Commission for Exemption from the Examination for Admission to the Bar shall cease to be in force upon the coming into force of these Regulations.

## THE PROVISIONAL REGULATIONS GOVERNING THE REGISTRATION OF LAWYERS.

(Promulgated by an Order of the Ministry of Justice, dated  
September 19th, 1912; amended by Ministerial Order  
No. 363, dated November 27th, 1917)

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—A person who applies for registration shall conform to the procedure prescribed in Articles 6, 9 and 10 of the Revised Provisional Regulations governing Lawyers.

The same rule shall apply to an application to cancel a registration or to register again.

**Article 2.**—When a High Court receives an application for registration, it shall make investigations about the matters referred to in Articles 2 to 4 and 13 and 14 of the Revised Provisional Regulations governing Lawyers, and make a report, together with a statement of opinion, to the Minister of Justice.

**Article 3.**—Registration of a lawyer shall be effected by the High Court under an order of the Minister of Justice.

The same rule shall apply to an application to cancel a registration, a report of death from the president of a bar association, or a cancellation of a registration upon the happening of any of the events mentioned in Article 4 of the Revised Provisional Regulations governing Lawyers or upon notification from the court which accepted the case.

**Article 4.**—Lawyers' Books shall be provided in accordance with Articles 7 and 8 of the Revised Provisional Regulations governing Lawyers.

**Article 5.**—The Minister of Justice shall publish in the Government Gazette the registration of a lawyer or the cancellation of a registration.

**Article 6.**—The president of a bar association shall report at once to the District Court of the locality the name of the lawyer admitted to the association and the date of his admission.

**Article 7.**—The provisions of these Regulations shall come into force on January 1st of the 7th year of the Republic.

PROVISIONAL RULES GOVERNING THE COMMISSION  
FOR THE DISCIPLINARY PUNISHMENT OF  
LAWYERS.

(Order of the Ministry of Justice No. 325, dated December 27th,  
1913 ; amended by Order No. 100, dated October 25th, 1916)

*Translated and published by the Commission on Extraterritoriality, Peking.*

CHAPTER I.—THE ORGANIZATION OF THE COMMISSION FOR THE  
DISCIPLINARY PUNISHMENT OF LAWYERS.

*Article 1.*—The Commission for the Disciplinary Punishment of Lawyers shall be constituted by a chairman and four members.

*Article 2.*—The judges of the High Court shall be the members of the Commission for the Disciplinary Punishment of Lawyers ; and the president of the court, the chairman.

The judges of the Court of Cassation shall be the chairman of the Commission for the Review of Cases of Disciplinary Punishment of Lawyers ; and the President of the court, the chairman.

*Article 3.*—The members and the order in which a person shall act for another shall be determined by agreement between the President of the Court of Cassation and its judges or the president of the High Court and its judges, as the case may be, in a meeting at the end of each year.

*Article 4.*—All the Articles in Chapter III of Provisional Regulations of the High Courts and their Subordinate Courts shall apply to persons participating in the discussion.

*Article 5.*—Miscellaneous matters shall be prepared and done by a registrar of the court appointed by the chairman.

CHAPTER II.—INVESTIGATION OF CASES FOR DISCIPLINARY  
PUNISHMENT.

*Article 6.*—No discussion in the meeting shall commence unless the chairman and all the members are present. Decisions shall be made by the votes of a majority. The chairman shall have a vote.

*Article 7.*—The person who asks for an investigation of a case for disciplinary punishment shall present evidence together with a statement of opinion.

*Article 8.*—A date for a meeting shall be determined by the chairman within 15 days after the receipt of the case.

The chief procurator of the High Procuratorate shall be present in the meeting to state his opinion.

*Article 9.*—The Commission may make investigations by virtue of its own power or entrust the making of them to another court or a procuratorate.

In the investigation of evidence, the lawyer may, if necessary, be given a period of time within which to present a statement of defence or be ordered to appear in the meeting to state the defence ;



provided that if he fails to present the statement within the period of time or to appear in the meeting, a decision may be made forthwith.

*Article 10.*—The opening and prolonging of a meeting and the holding of successive meetings and the termination of a discussion shall be determined by the chairman ; provided that the question of the termination of a discussion may be put to vote upon the motion of two members.

*Article 11.*—Votes in connection with the question of the infliction of disciplinary punishment shall be taken first as to the legality of the institution of the proceedings for disciplinary punishment and then as to whether a disciplinary punishment should be inflicted for the act in question.

*Article 12.*—If the Commission for the Disciplinary Punishment of Lawyers anticipates during the investigation that the punishment or cancellation of registration will be inflicted for the act in question, it may at any time decide, by virtue of its own powers or at the request of the chief procurator of the High Procuratorate, to stop the lawyer under investigation from exercising his functions.

Such decision shall be notified to the chief procurator of the High Procuratorate and the lawyer under investigation ; it shall take effect on the day when the notification is received.

*Article 13.*—Votes shall be taken with signed ballots.

*Article 14.*—The decision shall be reported at once to the Minister of Justice and notified to the chief procurator of the High Procuratorate and to the lawyer whose name has been submitted or disciplinary punishment.

### CHAPTER III.—APPLICATION FOR APPEAL.

*Article 15.*—The chief procurator of the High Procuratorate or the lawyer whose name has been submitted for disciplinary punishment may, within twenty days from the day after the receipt of the notification, petition the Minister of Justice for an appeal from the decision of the Commission for the Disciplinary Punishment of Lawyers.

When an appeal is petitioned for, a statement of the reasons shall be presented to the Minister of Justice through the Commission for the Disciplinary Punishment of Lawyers.

When the Commission receives such statement of reasons, it shall promptly send it, together with the record and evidence, to the Minister of Justice ; provided that if the time limit has been passed, it shall notify the chief procurator of the High Procuratorate and the lawyer under punishment.

*Article 16.*—When the Minister of Justice receives the documents mentioned in the last preceding article, he shall give at once one of the following two orders :

- (1) if the application is contrary to law or is without good cause he shall refuse it ;
- (2) if it shows good cause, he shall send it to the Commission for the Review of Cases of Disciplinary Punishment of Lawyers for a reinvestigation.

*Article 17.*—The infliction of a disciplinary punishment becomes final if there is no petition for appeal in conformity with law within

the period of time or if the Minister of Justice gives the order of sub-division (1) of the last preceding Article.

The decision of the Commission for Review referred to in sub-division (2) of the last preceding article becomes final after it has been reported to the Minister of Justice.

#### CHAPTER IV.—THE EXECUTION OF A DISCIPLINARY PUNISHMENT.

*Article 18.*—After the Minister of Justice has received the report of the decision of the Commission for the Disciplinary Punishment of Lawyers or has given the order of sub-division (1) of Article 16, he shall take one of the following measures as the case may be :

- (1) Advice and warning or suspension of functions—as well as ordering the chief procurator of the proper High Procuratorate to order the chief procurator of the District Procuratorate to forward the document containing the advice and warning or the order of the suspension of functions, the Minister of Justice shall publish the decision and the document containing the advice and warning or the order of the suspension of functions in the Government Gazette.
- (2) Cancellation of registration—as well as ordering the chief procurator of the proper High Procuratorate to order the chief procurator of the District Procuratorate to have the lawyer's certificate surrendered and as well as ordering the president of the proper High Court to cancel the registration the Minister of Justice shall publish the decision and the order of the cancellation of the registration in the Government Gazette.

#### CHAPTER V.—THE RELATION BETWEEN THE INVESTIGATION OF CASES OF DISCIPLINARY PUNISHMENT AND CRIMINAL PROCEEDINGS.

*Article 19.*—If criminal proceedings have been instituted in any matter, an investigation of the same matter by the Commission for the Disciplinary Punishment of Lawyers shall not be commenced.

If criminal proceedings are instituted in any matter under investigation by the Commission, such investigation shall stop until the judgment is given.

*Article 20.*—If any matter has, in relation to any criminal proceedings, resulted in non-prosecution or acquittal, such matter may nevertheless be submitted for disciplinary punishment.

#### CHAPTER VI.—SUPPLEMENTARY PROVISIONS.

*Article 21.*—The provisions of these Rules shall cease to be in force after the Law of the Disciplinary Punishment of Lawyers is promulgated.

*Article 22.*—The provisions of these Rules shall come into force on the day of promulgation.

**THE DETAILED RULES GOVERNING THE INVESTIGATION  
BY THE COMMISSION FOR THE REVIEW OF CASES  
FOR DISCIPLINARY PUNISHMENT OF LAWYERS**

**(Notified by the Court of Cassation to the Ministry of Justice on  
December 30th, 1916)**

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—Apart from these Detailed Rules, the provisions of Articles 6, 8, 9, 10 and 12 of the Provisional Rules governing the Commission for the Disciplinary Punishment of Lawyers shall apply to the Commission for the Review of Cases for Disciplinary Punishment of Lawyers; provided that the functions of the chief procurator of the High Procuratorate prescribed by Article 8, subdivision (2) and Article 12 shall be exercised by the Procurator-General.

**Article 2.**—When a case for review reaches the Commission, it shall be equally undertaken by the members; the conducting member shall assign the matters by lot.

**Article 3.**—When a lawyer whose name has been submitted for disciplinary punishment is ordered in accordance with the provisions of Article 9 of the Provisional Rules governing the Commission for the Disciplinary Punishment of Lawyers to appear in the meeting to defend, the conducting member shall question him and order the registrar to take note.

**Article 4.**—The conducting member shall make a report of the investigation.

**Article 5.**—After the chairman has received the report, he shall determine a date to hold a meeting of the Commission and notify the Procurator-General thereof.

**Article 6.**—The Commission shall examine the original decision in respect of the following questions; provided that the examination shall be limited to the part against which the appeal was petitioned for:

- (1) Is there any mistake about the facts, or is any relevant fact omitted in support of which there is evidence?
- (2) Is the law or ordinance properly applied?

**Article 7.**—Each member shall, during the discussion, express his opinion, beginning with the last in order of precedence and ending with the chairman.

**Article 8.**—The opinion of a majority of the members shall be the decision of the Commission. If there are three or more different opinions no one of which is supported by a majority, these opinions shall be arranged in the order of the degree of unfavorableness to the lawyer under investigation and the middle one shall be taken as the decision of the Commission.

**Article 9.**—A reinvestigation may be concluded by any one of the following decisions:



- (1) If there is good reason for the petition for reinvestigation the original decision shall be changed.
- (2) If the petition does not show good cause, it shall be rejected.
- (3) If, although the original decision is contrary to law or otherwise improper, it nevertheless should, for some other reason, be sustained, the petition shall be rejected.

*Article 10.*—The decision shall be noted down by the registrar in the record of the decisions ; the chairman shall appoint one of the members to make a report of the decision to be sent to the Minister of Justice and the Procurator-General.

*Article 11.*—The provisions of these Detailed Rules shall come into force on the day of their passing by the Commission for the Review of Cases for Disciplinary Punishment of Lawyers.

**PROVISIONAL REGULATIONS GOVERNING THE  
APPEARANCE IN COURT OF LAWYERS OF  
NON-EXTRATERRITORIAL POWERS\***

(Order of the Ministry of Justice No. 1186, dated December 24th, 1920 ; amended by Order No. 155, dated February 25th, 1922)

*Translated and published by the Commission on Extraterritoriality, Peking.*

*Article 1.*—A national of a non-extraterritorial Power who has been a judge in his own country or has obtained a lawyer's certificate and practised law there may be permitted to acquire a lawyer's certificate ; provided that he has been subjected to an investigation by the Ministry of Justice and been considered competent.

If a person applies for a lawyer's certificate, he shall hand the proof of his qualification and all other necessary documents to a High Procuratorate to be forwarded to the Ministry of Justice for examination.

*Article 2.*—After a national of a non-extraterritorial Power has obtained the lawyer's certificate referred to in the preceding article, been registered according to law, and been admitted to the bar association, he may appear in a court to exercise his functions.

*Article 3.*—The functions that a lawyer of a non-extraterritorial Power may exercise in a court shall be confined to cases of nationals of non-extraterritorial Powers and to matters entrusted by them.

*Article 4.*—As regards rules that a lawyer of a non-extraterritorial Power should observe, the provisions in the Revised Provisional Regulations governing Lawyers and other laws and ordinances shall apply unless these Regulations otherwise provide.

*Article 5.*—These Regulations shall apply only to nationals of non-extraterritorial Powers ; they shall not apply to a national of a Power which has extraterritorial jurisdiction.

*Article 6.*—The provisions of these Regulations shall come into force on the day of promulgation.

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\*States which have no extraterritorial jurisdiction in China.

## THE REGULATIONS GOVERNING COSTS

(Approved by Presidential Order, dated June 20th, 1920 ; amended on February 24th, 1921, December 1921, and June 29th, 1922).

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—Costs shall be charged and calculated in accordance with the provisions of these Regulations.

**Article 2.**—In a civil case for a property right, a trial fee shall be charged according to the value of the subject-matter of the action, or according to the amount if the subject-matter is money, in accordance with the following rates :

(1) less than	..	\$	10	..	..	..	\$	0.30
(2) over	..	\$	10 but less than	\$	25..	\$	0.60	
(3) „	..	\$	25 „	\$	50..	\$	1.50	
(4) „	..	\$	50 „	„	75	\$	2.20	
(5) „	..	\$	75 „	„	100..	\$	3.00	
(6) „	..	\$	100 „	„	200..	\$	6.00	
(7) „	..	\$	200 „	„	1,000..	\$	2.00 for	
every additional amount of a hundred dollars ; provided that an additional amount of less than \$100 shall be treated as \$100.								
(8) over	..	\$	1,000 but less than	\$	2,000..	\$	25.00	
(9) „	..	\$	2,000 „	„	4,000..	\$	32.00	
(10) „	..	\$	4,000 „	„	6,000..	\$	42.00	
(11) „	..	\$	6,000 „	„	8,000..	\$	55.00	
(12) „	..	\$	8,000 „	„	10,000..	\$	70.00	
(13) „	..	\$	10,000	..	..	\$	3.00 for	
every additional amount of a thousand dollars ; provided that an additional amount of less than \$1,000 shall be treated as \$1,000.								

If the subject-matter of an action is money in terms of taels, coppers or a foreign currency, the amount shall be reckoned in dollars.

The value of the subject-matter of an action shall be determined in accordance with Articles 5 to 13 of the Regulations of Civil Procedure.

**Article 3.**—In a civil case not for a property right, the trial fee shall be charged in accordance with sub-division (5) of the first paragraph of the last preceding article.

If a claim on a property right is made in a case not for such right, and if the amount of money or the value, as the case may be, is over \$100, the trial fee shall be charged according to the amount of money or the value.

**Article 4.**—If the subject-matter of an action and the subject-matter of a counter-claim are the same, no trial fee shall be charged for the counter-claim.

**Article 5.**—In an appeal in a civil case in a court of second instance, the trial fee shall be increased by forty per cent. of the



rate as prescribed by Articles 2 and 3, and in an appeal in a court of third instance, by sixty per cent.

The same rule shall apply to an appeal after a new trial of a case remanded for that purpose.

*Article 6.*—In a new trial of a civil case, the trial fee shall be charged according to whether the court is a court of first or second instance and in conformity with Articles 2 and 3 and the last preceding article.

*Article 7.*—A trial fee of one dollar shall be charged for any of the following applications or notices in a civil case :

- (1) A first or second appeal from a ruling or order.
- (2) An application for restoration to the original conditions.
- (3) An application for a provisional seizure or provisional disposal.
- (4) An application for a judgment of exclusion.

*Article 8.*—If an objection against an order for payment is deemed to be the commencement of an action under Article 608 of the Regulations of Civil Procedure, a trial fee shall be charged in accordance with the provisions of Article 2.

*Article 9.*—For an execution in a civil case, an execution fee shall be charged according to the amount of money for which the thing in execution is sold by auction in accordance with the following rates :

(1) less than	..	\$ 25	..	..	..	\$ 0.30
(2) over	..	\$ 25 but less than	\$ 50	..	\$ 0.50	
(3) ..	..	\$ 50	..	..	\$ 1.00	
(4) ..	..	\$ 100	..	..	\$ 1.80	
(5) ..	..	\$ 250	..	..	\$ 2.50	
(6) ..	..	\$ 500	..	..	\$ 3.50	
(7) ..	..	\$ 1,000	..	..	\$ 1.50 for	
every additional amount of \$1,000; provided that an additional amount less than \$1,000 shall be treated as \$1,000.						

If the thing in execution is not sold by auction, the execution fee shall be reduced by half of the rates as prescribed in the preceding paragraph.

The provisions of Article 2, paragraphs 2 and 3 shall apply to the amount of money or value set out above.

*Article 10.*—For service of a judgment, a writ of summons or any other document relating to an action, a fee of ten cents per copy shall be charged.

If the journey back and forth cannot be completed in a day, a fee of fifty cents per day for food and lodging and the actual travelling expenses shall be charged.

If the service is by mail, the provisions of Article 14 shall apply.

*Article 11.*—A fee of ten cents per hundred words shall be charged for copying. A number of words less than a hundred shall be treated as a hundred.

*Article 12.*—A fee of from twenty to forty cents per hundred words, to be determined by the court, shall be charged for translation. A number of words less than a hundred shall be treated as a hundred.

*Article 13.*—Fees for advertisements in an official gazette or newspaper shall be charged according to the actual cost.

*Article 14.*—Fees for mail, or telegraph or transportation shall be charged according to actual cost.

*Article 15.*—Fees for the appearance of a witness in the court shall be five cents for each appearance ; of an expert or interpreter, not less than fifty cents nor more than five dollars, to be determined by the court.

If a witness, an expert or an interpreter stays over a day for the purpose of being examined or inquired of or interpreting, as the case may be, a staying fee of fifty cents per day shall be paid to the witness ; and not less than fifty cents or more than five dollars per day, to the expert or interpreter.

The travelling expenses of a witness, an expert or an interpreter shall be charged according to the actual amount expended.

*Article 16.*—The travelling expenses of a judge or a registrar of a court who has taken a trip to investigate evidence shall be charged in accordance with the Rules governing the Travelling Expenses of Officials on Commission.

*Article 17.*—All other necessary expenses not prescribed by these Regulations shall be charged according to the actual amount expended.

*Article 18.*—If a party in a case applies for procedural relief, he shall provide a shop guarantee or a bond by his neighbour.

If after the court has granted the relief, it discovers that the party should not have received such relief, it may order him or his guarantor to pay all the fees that ought to have been paid.

If a party in a case who applies for procedural relief has explained why he cannot provide the guarantee referred to in the first paragraph and fulfil all the necessary conditions for such relief, the court may nevertheless grant such relief.

*Article 19.*—The provisions of Articles 7 and 10 to 18 shall apply to non-contentious matters ; provided that they shall not apply if the Regulations governing the Registration or any other law or ordinance otherwise provide.

*Article 20.*—A High Court or a High Procuratorate may, on account of necessity, tentatively determine an increase of the fees that ought to be charged under Articles 2 to 12 and submit it to the Minister of Justice for approval ; provided that such increase shall not exceed half of the original rate.

If a High Court or a High Procuratorate has, before the coming into force of these Regulations, petitioned the Ministry of Justice for an increase of the fees referred to in the preceding paragraph and such increase has been approved by the Ministry, it shall not be affected by these Regulations.

# THE REGULATIONS RELATING TO JUDICIAL STAMPS

(Ordinance No. 13, promulgated on June 29th, 1922)

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—Judicial stamps shall be made by the Ministry of Justice which shall appoint or authorise a proper agency to sell them.

The aforesaid authorisation and the arrangement for accounting shall be regulated separately.

**Article 2.**—Judicial stamps are of the following kinds :

(1) light blue .. .. .	\$ 0.01
(2) green .. .. .	\$ 0.05
(3) purple .. .. .	\$ 0.10
(4) brown .. .. .	\$ 0.20
(5) reddish brown .. .. .	\$ 0.50
(6) blue .. .. .	\$ 1.00
(7) yellow .. .. .	\$ 5.00
(8) red .. .. .	\$10.00

**Article 3.**—The price of judicial stamps shall be reckoned in terms of the current silver dollar ; provided that an amount less than a dollar may be reckoned in terms of small silver coins or coppers.

The equivalent of small silver coins or coppers for current silver dollars shall be according to local rates both for payment and for receipt.

**Article 4.**—If the amount of stamps required includes a fraction of a cent, a half cent shall be treated as a cent, and less than (half) a cent shall not be reckoned.

**Article 5.**—The agency appointed or authorised by the Ministry of Justice to sell stamps shall make an estimate of the total amount of stamps needed during the season, a year being divided into four seasons for that purpose, prepare a list specifying the kind and quantity, and make requisition a month in advance ; provided that this rule shall not apply if there is not a sufficient amount ready for issue.

**Article 6.**—When the agency which sells judicial stamps applies for such stamps, it shall send a report of the total amount sold and the part left of the whole amount of stamps already supplied.

**Article 7.**—Whoever forges or alters a judicial stamp made by the Ministry shall be punished under the Provisional Criminal Code for forging valuable securities.

**Article 8.**—All documents to be delivered to a judicial body shall carry stamps as follows:

(1) Documents in civil cases .. .. .	\$0.20
(2) „ in criminal cases .. .. .	\$0.10

Any other document, no matter what it is, shall carry a judicial stamp of one cent.



The stamp shall be affixed at the upper left-hand corner of the documents referred to in the two preceding paragraphs.

*Article 9.*—The following fees shall be paid by judicial stamps :

- (1) Any of the fees charged under Articles 2 to 9 and Article 10, paragraph 1, and Article 11 of the Revised Regulations governing Costs.
- (2) Registration and entry fees.
- (3) Fines ; provided that this rule shall not apply to a part of the fine which is to be applied to a reward.

*Article 10.*—For the trial fees that should be charged under Articles 2 to 7 of the Revised Regulations governing Costs, a party in a case shall buy judicial stamps to the amount required from the agency which sells such stamps and affix them to the last page of the document to be delivered.

If a case is instituted, or an appeal, application or notice, made orally, the judicial stamps referred to in the preceding paragraph shall be affixed to a paper of a fixed form and delivered to the proper judicial body, or the price of such stamps shall be paid to such judicial body to buy such stamps to be affixed to a paper of the fixed form.

*Article 11.*—For the trial fees that should be charged under Article 8 of the Revised Regulations governing Costs, a party in a case shall buy judicial stamps to the amount required from the agency which sells such stamps, affix them to a paper of a fixed form, and deliver it to the proper judicial body.

*Article 12.*—For the execution fees that should be charged under Article 9 of the Revised Regulations governing Costs, the judicial stamps to the amount required shall be bought from the agency which sells such stamps by the judicial body which takes charge of the execution with the money of the auction sale and be affixed to a paper of the fixed form, or such stamps shall be bought by the party in the case, affixed to a paper of the fixed form, and delivered to the proper judicial body.

*Article 13.*—For the service fees that should be charged under Article 10, paragraph 1 of the Revised Regulations governing Costs, the proper judicial body shall buy judicial stamps from the agency which sells such stamps to the amount required with the money previously paid by the party in the case and affix them to the service certificate ; or such judicial body shall calculate the amount and mark it on the service certificate which shall be handed by the process-server to the person to be served who shall buy and affix such stamps thereto ; or such process-server may collect the amount from the person to be served and buy and affix them for him.

*Article 14.*—For the copying fees that should be charged under Article 11 of the Revised Regulations governing Costs, a party in a case shall buy judicial stamps to the amount required from the agency which sells such stamps and affix them to a paper of a fixed form.

*Article 15.*—For registration or entry fees that should be charged under the Regulations governing Registrations and Entries, the applicant shall buy judicial stamps to the amount required from

the agency which sells such stamps and affix them to the last page of the application document.

If the application is oral, Article 10, paragraph 2, shall apply.

*Article 16.*—For a fine, the person fined shall buy judicial stamps to the amount of the fine from the agency which sells such stamps, affix them to a paper of a fixed form, and deliver it to the proper judicial body. In case of execution, the first part of Article 12 shall apply.

If a part of the fine is to be applied to a reward, the proper judicial body shall order the person fined to pay cash for that part.

*Article 17.*—If a party is not clear about the amount of judicial stamps required, he may apply to the proper judicial body to determine the amount. Such judicial body shall mark down the amount and date on the last page of the document delivered near the space where such stamps are to be affixed, and the person who takes charge of the matter shall affix his personal seal thereto, and hand it to the party who shall buy such stamps from the agency which sells them and affix them thereto.

With regard to the aforesaid application, the judicial body shall hand it at once to the person who takes charge of such matters to deal with it in accordance with the preceding paragraph.

*Article 18.*—After a judicial body has received a document or a paper of a fixed form with judicial stamps affixed, it shall calculate the amount of stamps to ascertain if it conforms to the provisions of the Regulations concerned, give to the person who has delivered such document or paper a receipt indicating the document received and the amount of the stamps, and make entries in the proper Daily Book prescribed by Article 27.

*Article 19.*—If a judicial body discovers that a document which ought to carry a stamp fails to carry one or fails to carry sufficient stamps, it shall calculate at once the amount required or the amount to be made up, and notify the party to affix the stamps required.

If the party disputes as to the amount required or the amount to be made up, the matter shall be dealt with by the officer in charge.

If it is not proper to hand the document to the party to affix the required stamps, he shall be ordered to affix them to a paper of a fixed form.

*Article 20.*—The paper of a fixed form to which judicial stamps were affixed shall be bound, together with the document or note, in the original record.

*Article 21.*—Such judicial stamps shall be stamped at once by the agency which sells them.

The stamping of judicial stamps is regulated by the Detailed Rules governing the Enforcement of the Regulations relating to Judicial Stamps.

*Article 22.*—With regard to the selling of judicial stamps, the proper kind shall be sold (for example, if the amount required is ten cents, fifty cents or one dollar, the ten cent, fifty cent or one dollar stamp shall be sold, as the case may be); if there is no equivalent stamp, stamps of the largest possible amount shall be sold (for example, if the amount is \$127.85, twelve ten dollar stamps, one

five dollar stamp, two one dollar stamps, one fifty cent stamp, one twenty cent stamp, one five cent stamp and one ten cent stamp).

*Article 23.*—If the judicial stamps are not sold by the agency in question, such agency may refuse to stamp them.

*Article 24.*—If the judicial stamps are not stamped by the agency which sold them, the judicial body shall not accept them.

*Article 25.*—No judicial stamp that has been affixed shall be returned.

*Article 26.*—A person who has bought a judicial stamp may ask the agency which sold it to change it, if

- (1) it is broken, injured or soiled, or
- (2) he considers that it has been used.

*Article 27.*—A judicial body shall provide different Daily Books for the different kinds of judicial fees that should, under the provisions of Article 9, be paid by judicial stamps, to record the name and address of a person who used such stamps, the subject-matter of the case or the nature of the matter, as the case may be, the amount of stamps affixed and the date.

*Article 28.*—A judicial body shall, at the end of each month make reports of the entries in the different daily books referred to in the last preceding article and present them to the proper High Court or High Procurate which shall send them, together with similar reports from other judicial bodies, to the Ministry of Justice. The High Court and High Procuratorate shall also make reports of the entries in the different daily books of the court or procuratorate, as the case may be, and send them to the Ministry.

The making of reports referred to in the preceding paragraph shall not be delayed over a month.

In case of a contravention of the provision of the preceding paragraph, the officer in charge of such matter shall, unless there is proper reason, be subjected to a proper punishment.

*Article 29.*—If a judicial body makes the reports referred to in the last preceding article each month without delay, it shall receive a proper reward from the higher judicial body at the end of the year.

*Article 30.*—The forms of the papers to which judicial stamps are to be affixed, the daily books referred to in Article 27, and the monthly reports referred to in Article 28 shall be prescribed, and the Regulations of the Reward and Punishment of Officers in Charge, be made separately.

*Article 31.*—If under the provisions of these Regulations, judicial stamps are to be used, payment in cash shall not be made to the judicial body; provided that this rule shall not apply if under Article 10, paragraph 2, Articles 12 and 13, Article 15, paragraph 2, and Article 16, such stamps may be bought and affixed by the judicial body for the person, or payment in cash shall be made.

*Article 32.*—The provisions of these Regulations shall come into force on August 1st of the 11th year of the Republic.

From the day of the coming into force of these Regulations, all other regulations in force which are inconsistent with these Regulations shall be abrogated; provided that those which are not inconsistent shall remain in force.



# THE DETAILED RULES GOVERNING THE ENFORCEMENT OF THE REGULATIONS RELATING TO JUDICIAL STAMPS

(Ordinance No. 14, promulgated on June 29th, 1922)

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—In proceedings which started before the coming into force of the Regulations relating to Judicial Stamps, all the documents shall, from the day on which the Regulations come into force, be governed thereby.

**Article 2.**—If an increase of judicial fees has been approved upon petition of a High Court or High Procuratorate before the coming into force of the Regulations relating to Judicial Stamps, such increase shall be governed thereby.

**Article 3.**—The sale of judicial stamps shall be entrusted by the Ministry of Justice to the General Post Office.

The Regulations governing the sale of Judicial Stamps by the General Post Office shall be made separately.

**Article 4.**—If the amount of judicial stamps is less than a dollar, it shall be paid by small silver coins or coppers to the amount equivalent to so much of a dollar as is expressed by the amount of stamps to be bought. The arrangement for the sale of postage stamps shall apply.

**Article 5.**—Judicial stamps shall be stamped by the post office.

The stamping shall be made with the daily stamp used by the post office ; provided that the date in the stamp shall be clear.

**Article 6.**—The post office authorized by the General Post Office with the sale of judicial stamps shall be the post office or branch post office nearest to the judicial body.

In a locality where there is no post office, the General Post Office may entrust the postal agency or any other proper body nearest to the judicial body with the sale of such stamps.

**Article 7.**—If there is any provision that should be introduced into these Detailed Rules, amendments may, at any time, be made and promulgated.

**Article 8.**—The provisions of these Detailed Regulations shall come into force on August 1st of the 11th year of the Republic.

## THE GENERAL REGULATIONS GOVERNING REGISTRATION

(Ordinance No. 6, promulgated on May 21st, 1922)

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—The entry in the register of any of the following matters shall have the full force of a notarial proof unless it is otherwise provided by law :

- (1) Rights relating to immovables.
- (2) Matters relating to juristic persons or other civil or commercial associations.
- (3) Matters relating to commercial enterprises or trade names.
- (4) Matters relating to civil or commercial juristic acts or other facts.
- (5) Matters relating to ships.
- (6) Matters relating to management of property.
- (7) Other things that according to law should be registered.

**Article 2.**—Any person who by means of fraud or force hinders a registration shall not rely upon the want of registration or its defect.

The provisions of the preceding paragraph shall apply to a person who is bound to effect registration for another, unless the cause of registration arises after the cause of his own registration.

**Article 3.**—District Courts or District Judicial Offices shall be registration offices.

The president of the District Court or the magistrate or persons commissioned by the president or magistrate to take charge of registration matters shall be registration officers.

**Article 4.**—The jurisdiction of a registration office shall be in accordance with the provisions of the Regulations of Registration and other laws or ordinances. If there is any doubt or inconsistency in the matter, an application may be made to the president of the High Court for determination.

**Article 5.**—Where the jurisdiction of a registration office undergoes an entire change, the original office shall forward to the office that succeeds to its jurisdiction all documents connected with registration.

Where the change is only in part, then part of the documents of registrations or copies of them shall be forwarded.

The provisions of the last preceding paragraph shall apply where there are several offices to succeed to the old jurisdiction.

**Article 6.**—Unless it is otherwise provided by law, no registration may be effected without application or instruction.

**Article 7.**—Application for registration shall be made by the applicant in writing or orally.

Where an application is made orally, the registration office shall make note of the application and order the applicant to place his signature and seal or mark on such note.

*Article 8.*—Application for registration may be made by an agent; provided that a document proving his authority shall be produced, such document being signed and sealed or marked by the principal himself.

In the above circumstances, the registration office may, if necessary, order the principal to be present for examination or entrust the examination to a proper public office.

*Article 9.*—Where a registration officer or his wife or relative applies for registration, the sanction of the president of the District Court or the magistrate shall first be obtained.

If the applicant referred to in the preceding paragraph is the president of the District Court or the magistrate, the sanction of the president of the High Court shall first be obtained.

*Article 10.*—Instruction for registration shall be given in an official document by a proper public office.

*Article 11.*—While making a registration, a registration office shall, if necessary, make investigations of evidence relating to the matters to be registered.

In the circumstances referred to in the preceding paragraph, the applicant may be ordered to produce documentary evidence; or the party himself, interested parties, or witnesses may be ordered to be present for examination, and expert examination or inspection, made.

*Article 12.*—The investigation referred to in the last preceding article may be entrusted to a proper public office.

*Article 13.*—The provisions in the Regulations of Civil Procedure concerning days and periods of time shall apply to matters of registration.

*Article 14.*—The registration office or the proper higher office shall, on objection being raised or appeal made against any matter registered, decide by a ruling.

*Article 15.*—Such ruling shall be given within ten days after the acceptance of the case. Notice of it shall be given immediately; provided that if no notice can be given, a public notice may take its place.

The way of giving the notice referred to in the preceding paragraph and the place and date shall be stated in the original copy of the ruling.

*Article 16.*—The original copy of the ruling shall be dated and signed by the proper chief officer.

A certified copy shall be made according to the original, bearing the date on which it is made, the seal of the proper court, and the signature of the person who makes the copy.

*Article 17.*—If any officer in charge of registration matters violates any law or any of his official duties or is otherwise guilty of any misconduct, the applicant or an interested party may raise objections before the president of the District Court or the magistrate.

Appeal against any ruling given in consequence of such objection may be made to the president of the High Court.

*Article 18.*—The period allowed for appeal is ten days from the day when notice of the ruling is received.



**Article 19.**—A registration officer who in execution of his duties wilfully or by gross negligence causes damage to the applicant or an interested party shall be liable for compensation.

In the circumstances referred to in the preceding paragraph, if the means of the guilty officer are insufficient to make compensation, the registration office may make good the insufficiency out of the reserve funds.

**Article 20.**—A registration office shall keep 5% of the registration fees as a reserve fund.

**Article 21.**—Registration books and all forms relating to registration or registration fees shall be prescribed or approved by the Ministry of Justice and sent to High Courts which shall prepare such books and forms accordingly and send them to the registration offices within its jurisdiction.

If a registration office effects a registration not in conformity with the prescribed form, the proper superior office may, on application or *motu proprio*, cancel and rectify the registration.

**Article 22.**—All documents connected with registration shall be preserved separately. The procedure and period of preservation shall be prescribed separately.

**Article 23.**—If any document connected with registration is in danger of being destroyed or lost, the president of the District Court or the magistrate shall take all necessary measures.

**Article 24.**—Registration fees shall be paid by the person entitled to the right or the party in the matter.

**Article 25.**—Attendance fees and travelling expenses of witnesses and experts as well as service fees shall be governed by the Regulations of Civil Procedure.

**Article 26.**—The registration office may, according to circumstances, order the applicant or an interested party to bear the expenses of investigations of evidence and notification.

Appeal against the order referred to in the preceding paragraph may be made to the president of the High Court.

**Article 27.**—Judicial stamps shall be used for the payment of registration fees and all other charges within any district in which the Regulations relating to Judicial Stamps prevail.

**Article 28.**—A registration office in collecting any of the fees shall give a receipt of a prescribed form.

If the provisions of the preceding paragraph are violated, payment may be refused.

**Article 29.**—The date and place of the operation of these General Regulations shall be fixed by order of the Ministry of Justice.

## REGULATIONS GOVERNING REVENUE STAMP DUTY

Promulgated on the 21st day of the 10th month of the 1st year of the Republic of China (October 21st, 1912); and revised on the 7th day of the 12th month of the 3rd year of the Republic of China (December 7th, 1914).

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—All instruments of transfer concerning monetary matters, agreements, books of accounts, and receipts, which may be used as evidence shall be affixed with the necessary revenue stamps in accordance with these regulations before they can be considered as legal evidence.

**Article 2.**—All instruments of transfer, agreements, books of accounts, and receipts shall be divided into two groups as follows :—

Group One, Fifteen Classes.	Value specified on the document.	Amount of Stamp duty
1. Bills or Invoices ..	\$1 and over	\$.01
2. Custody Receipts for goods or for documents ..	1 " "	.01
3. Receipts for rental of goods	1 " "	.01
4. Instruments of hypotheca- tion .. .. .	1 " "	.01
5. Leases for agricultural land	1 " "	.01
6. Pawnbrokers' tickets ..	1 " "	.01
7. Employment agreements	1 " "	.01
8. Delivery orders .. ..	Exceeding 1 and not exc. \$10	.01
	" 10	.02
9. Receipts for the rental of shops or for the transfer of ownership of businesses ..	Exceeding 1 and not exc. \$10	.01
	" 10	.02
10. Orders for the sale or pur- chase of goods .. ..	Exceeding 1 and not exc. \$10	.01
	" 10	.02
11. Instruments for the rental of land or houses ..	Exceeding 1 and not exc. \$10	.01
	" 10	.02
12. Contractors agreements of every description .. ..	Exceeding 1 and not exc. \$10	.01
	" 10	.02
13. Receipts for moneys ..	Exceeding 1 and not exc. \$10	.01
	" 10	.02
14. Pass books for the with- drawal of money or goods	Per book per annum	.02
15. Business account books of every description .. ..	" " " "	.02

## Group Two, Eleven classes.

1. Bills of lading
2. Contracts and Sub-contracting agreements.
3. Insurance Policies
4. Guarantee certificates
5. Deposit receipts
6. Share certificates
7. Bills of exchange
8. Promissory notes
9. Wills and testaments concerning distribution of property
10. Loan agreements
11. Partnership and company agreements

When the amount or value of the money expressed on any document belonging to the above-mentioned eleven classes, exceeds

\$1 and does not exceed	\$10	the stamp duty shall be \$	.01
10   "   "   "   "	100   "   "   "   "		.02
100   "   "   "   "	500   "   "   "   "		.04
500   "   "   "   "	1,000   "   "   "   "		.10
1,000   "   "   "   "	5,000   "   "   "   "		.20
5,000   "   "   "   "	10,000   "   "   "   "		.50
10,000   "   "   "   "	50,000   "   "   "   "		1.00
50,000   "   "   "   "			1.50

*Article 3.*—Government contracts, agreements, books of accounts and receipts are exempt from revenue stamp duty; except those used in connection with government commercial enterprises, which must comply with these regulations.

*Article 4.*—Persons drawing up contracts or receipts shall affix the necessary revenue stamps and shall cancel the stamps on the margin by chop or initials previous to passing the said documents contracts or receipts over to the receiver. When duplicate copies are made for exchange between parties, each copy must be stamped in accordance with these regulations.

*Article 5.*—The necessary revenue stamps shall be affixed on the first page of books of accounts and pass-books before said books are used. The date shall be written partly across the stamp which shall be cancelled in accordance with Article 4. Books stamped in accordance with this Article are legal for one year and if the same books were used for another year, fresh revenue stamps must be affixed as if new books were used.

*Article 6.*—Failure to affix revenue stamps or to cancel stamps on agreements, books of accounts, and receipts, enumerated in Group 1 of Article 2, shall render the person concerned liable to a fine of a sum not exceeding \$20 but more than \$10. Failure to affix a sufficient amount of stamps shall render the person concerned to a fine of a sum not exceeding \$10 but more than \$5.

Failure to affix revenue stamps or to cancel stamps on agreements, books of accounts, and receipts enumerated in Group 2 of Article 2, shall render the person concerned liable to a fine of a sum not exceeding \$200, but more than \$20. Failure to affix a sufficient amount of stamps shall render the person concerned to a fine of a sum not exceeding \$100 but more than \$10.



*Article 7.*—The denominations of the revenue stamps shall be as follows :—

1. Brown	One Cent
2. Green	Two Cents
3. Red	Ten Cents
4. Purple	Fifty Cents
5. Blue	One Dollar

*Article 8.*—Persons using cancelled revenue stamps shall be liable to a fine of a sum not exceeding \$100, but more than \$20.

*Article 9.*—Persons forging revenue stamps or altering the face value of the same shall be severely punished in accordance with the law governing the counterfeiting of bank notes.

*Article 10.*—Ministry of Finance shall issue revenue stamps throughout the provinces. These regulations shall be enforced thirty days after the receipt of revenue stamps by the provincial authorities.

The date for the enforcement of these regulations in the Metropolitan District shall be fixed by the Ministry of Finance.

*Article 11.*—All documents drawn up previous to the date of promulgation of these regulations shall be exempt from revenue stamp taxation.

Presidential Order dated the 18th day of the 1st month of the 4th year of the Republic of China, (January 18th 1915), sealed by the President and countersigned by Premier Hsu Shih-chang. Rescript : "The revision of the regulation governing the revenue stamp duty for documents pertaining to personal affairs is hereby promulgated."

#### INSTRUCTION ORDER, NUMBER 3.

Revised regulation governing the revenue stamp duty for documents pertaining to personal affairs.

*Article 1.*—Documents pertaining to personal affairs shall be stamped in accordance with these regulations :

1. Passports to foreign countries	.. ..	\$2.00
2. Passports for the interior	.. ..	1.00
3. Pass for the exemption of duty	.. ..	1.50
4. Qualification certificates for ordinary officials	.. ..	1.00
5. " " " " higher officials	.. ..	2.00
6. Diplomas issued by middle schools	.. ..	.30
7. " " " " technical schools or by other higher educational institutions	.. ..	.50
8. Matriculation certificates issued by middle schools	.. ..	.04
9. " " " " technical schools or by other higher educational institutions	.. ..	.10
10. Marriage certificates	.. ..	.40

*Note.*—Students applying for passports to foreign countries shall be entitled to a reduction of 5 per cent. of the stamp duty on such passports.

*Article 2.*—Applicants for any of the documents enumerated in Article 1, shall pay the necessary revenue stamp duty, and the office issuing the document shall affix and cancel the stamp.

Persons failing to request the affixing of stamps or failing to pay the necessary revenue stamp duty, shall render the person concerned liable to a fine of a sum not exceeding \$200 but more than \$20.

Issuing officers failing to collect the necessary stamp duty, or failing to affix the revenue stamps, or issuing documents without stamps thereon, or accepting documents without revenue stamps, shall render themselves liable to the charge of Neglect of Duty.

*Note.*—Principals of private schools failing to comply with these regulations shall be liable to a fine of a sum not exceeding \$200 but more than \$20.

*Article 3.*—Persons of both parties who officiate the marriage shall each draw up a copy of the marriage certificates and shall affix and cancel the revenue stamps thereon before signing and exchanging the said certificates.

Failing to comply with the above regulation shall render the person or persons concerned liable to a fine of a sum not exceeding \$200 but more than \$20.

Failure to affix a sufficient amount of revenue stamps shall render the person or persons concerned liable to a fine of a sum not exceeding \$100 but more than \$20.

*Article 4.*—The regulations shall be enforced from the day of promulgation.

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#### REGULATIONS FOR THE ENFORCEMENT OF REVENUE STAMP DUTY AMONG CHINESE RESIDING WITHIN FOREIGN SETTLEMENTS OF TREATY PORTS.

*Article 1.*—All Chinese residing within Settlements of Treaty Ports shall comply with the regulations governing revenue stamp duty as promulgated on the 21st day of the 10th month of the First Year of the Republic of China, (October 21st, 1912); and revised on the 7th day of the 12th month of the Third Year of the Republic of China (December 7th, 1914); and shall also comply with the Presidential order governing revenue stamp duty for documents, pertaining to personal affairs as promulgated on the 18th day of the First month of the Fourth Year of the Republic of China, (January 18th, 1915).

*Article 2.*—The foreign police officers of the various settlements shall be empowered to enforce the use of revenue stamps on all documents, books of accounts, agreements and receipts which are enumerated in the regulations governing revenue stamp duty. Persons failing to comply with the regulations shall be fined in accordance with the provisions of the regulations and such fine shall be received by the proper consulate for safe custody.

An account of the proceeds from the fines shall be rendered once every three months. One half of the sum shall be turned over towards the administrative expenses of the settlements by the consul on behalf of the Chinese Government and the remaining one half shall be turned over to the Commissioner of Foreign Affairs for the Government Treasury.

*Article 3.*—Documents, agreements, books of accounts and receipts which are not stamped in accordance with the regulations

shall not be accepted as legal evidence in courts of law. In case of such unstamped documents, etc., being found, the holders shall be fined first by the mixed court or other courts of law for failure to conform to the revenue stamp regulations, and shall also compel the holders to affix and cancel the revenue stamps on the documents, agreements, books of accounts and receipts.

*Article 4.*—A separate department in the Chinese Post Office within the settlement shall be established for the sale of revenue stamps. If in future, sub Post-Offices or other special offices are established within the settlements, special arrangements will be made with consular authorities.

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IMPORTANT ITEMS OF THE REVENUE STAMP DUTY REGULATIONS  
ENFORCED AT THE PRESENT TIME.

*Rate of Duty.*

Schedule 1 :

1. Bills or Invoices
2. Custody receipts for goods or documents
3. Receipts for rental of goods
4. Instruments of hypothecation
5. Leases for agricultural land
6. Pawnbrokers' tickets
7. Employment agreements

The Revenue stamp duty for documents of the above seven classes is \$.01 each.

8. Delivery orders
9. Receipts for the rental of shops or for the transfer of ownership of business
10. Orders for the sale or purchase of goods
11. Instruments for the rental of land or houses
12. Contractors agreements of every description
13. Receipts for moneys, including exchange receipts, annual and periodic statements of accounts, etc.

The revenue stamp duty for documents of the above six classes is \$.01 when the value specified on the document exceeds \$1 and does not exceed \$10 ; and \$.02 when the value exceeds \$10.

14. Pass books for the withdrawal of money or goods
15. Business account books of every description

The revenue stamp duty for documents of the above two classes is \$.02 per book per annum.

Schedule 2 :

1. Bills of Lading
2. Contracts and Sub-contracting agreements
3. Insurance policies
4. Guarantee certificates
5. Deposit receipts
6. Share certificates
7. Bills of Exchange
8. Promissory notes
9. Wills and testaments concerning distribution of property.



## 10. Loan Agreements

## 11. Partnership and company agreements

When the amount or value of the money expressed on any document belonging to the above eleven classes :

exceeds

\$1. and does not exceed	\$10. the stamp duty shall be \$	.01
10. " " " "	100. " " " "	.02
100. " " " "	500. " " " "	.04
500. " " " "	1,000. " " " "	.10
1,000. " " " "	5,000. " " " "	.20
5,000. " " " "	10,000. " " " "	.50
10,000. " " " "	50,000. " " " "	1.00
50,000. " " " "	" " " "	1.50
12. Passports for foreign countries	" " " "	\$2.00
Students' passports	" " " "	1.00
Labourers' passports	" " " "	.30
13. Passports for the interior	" " " "	1.00
14. Pass for the exemption of duty	" " " "	1.50
15. Charters of electric companies, railways, and steamship companies	" " " "	2.00
16. Press telegram certificates	" " " "	1.50
17. Qualification certificates for high official	" " " "	2.00
18. Qualification certificates for ordinary official	" " " "	1.00
19. Medical practitioners' certificates	" " " "	1.00
20. Diplomas of technical schools or of other higher schools of learning	" " " "	.50
21. Diplomas of middle schools	" " " "	.30
22. Diplomas of higher primary schools	" " " "	.20
23. Diplomas of private schools	" " " "	.40
24. Certificates of schools of foreign countries	" " " "	.20
25. Teachers certificates for primary schools	" " " "	.20
26. Reports of scholastic standing	" " " "	.10
27. Certificates of matriculation or transfer issued by technical schools or other higher educational institutions	" " " "	.10
28. Certificates of matriculation or transfer issued by middle schools	" " " "	.04
29. Matriculation certificates of higher primary schools	" " " "	.03
30. Petitions and appeals to official departments	" " " "	.10
31. Naturalization certificates	" " " "	2.00
32. Application forms for naturalization and guarantee certificates	" " " "	.20
33. Marriage certificates	" " " "	.40

2. *Ways for the affixing of Revenue Stamps.*

- (a) Agreement and receipts. Revenue stamps shall be affixed previous to the transfer and receipt of documents. If agreements are drawn in duplicate, each copy shall be affixed with stamps.
- (b) Account and Pass Books. Revenue stamps shall be affixed on the first page of account and pass books before being put into use. The date shall be written partly across the stamp. Books so stamped are legal for one year, and

if the same book is used for another year, fresh revenue stamps must be affixed as if a new book were used.

- (c) **Passports, Passes, Certificates, and Applications.** The applicant shall pay the cost of the revenue stamps and the office of issue shall affix the revenue stamps on all such documents.
- (d) **Petitions and Appeals.** Revenue stamps shall be affixed on the first page of all petitions and appeals.
- (e) **Marriage Certificates.** Persons of both parties who officiate the marriage shall each draw up a copy of the marriage certificate and shall affix the revenue stamps thereon.

*Note.*—Revenue stamps affixed on documents enumerated in the above five paragraphs shall be cancelled by chop or initials on the margin of the said stamps.

### 3. *Penalties.*

- (a) Failure to affix revenue stamps or to cancel stamps on documents enumerated in Schedule 1 (including 15 classes ; agreements, receipts, delivery orders, etc.) shall render the person concerned liable to a fine of a sum not exceeding \$20 but more than \$10. Failure to affix a sufficient amount of stamps shall render the person concerned liable to a fine of a sum not exceeding \$10 but more than \$5.
- (b) Failure to affix revenue stamps or to cancel stamps on documents enumerated in Schedule 2 (including 33 classes ; agreements, receipts, delivery orders, etc.) shall render the person concerned liable to a fine of a sum not exceeding \$200 but more than \$20. Failure to affix a sufficient amount of stamps shall render the person concerned liable to a fine of a sum not exceeding \$100 but more than \$10.
- (c) **Passports, passes, certificates, and applications.** Persons failing to request the affixing of stamps or failing to pay the necessary revenue stamp duty, shall render themselves liable to a fine of a sum not exceeding \$200, but more than \$20. Issuing officers failing to collect the necessary stamp duty, or failing to affix the revenue stamps, or issuing documents without stamps, or accepting documents without stamps, shall render themselves liable to a charge of Neglect of Duty. Principals of private schools failing to comply with these regulations shall be liable to a fine of a sum not exceeding \$200 but more than \$20.
- (d) **Petitions and appeals.** Unstamped and insufficiently stamped petitions and appeals shall not be received or attended to by official, departments. Officials receiving unstamped or insufficiently stamped documents shall render themselves liable to the charge of Neglect of Duty.
- (e) **Marriage certificates.** Failure to affix revenue stamps on certificates shall render the person concerned liable to a fine of a sum not exceeding \$200 but more than \$20. Failure to affix a sufficient amount shall render the person concerned liable to a fine of a sum not exceeding \$100 but more than \$10.

- (f) Persons using cancelled revenue stamps shall be liable to a fine of a sum not exceeding \$100. but more than \$20.
- (g) Persons forging revenue stamps or altering the vlaue of the same shall be severely punished in accordance with the law governing the counterfeiting of bank notes.



# RULES GOVERNING THE ADMINISTRATION OF PRISONS

(Promulgated by Order No. 284 of the Ministry of  
Justice on December 1, 1913)

*Translated and published by the Commission on Extraterritoriality, Peking.*

## CHAPTER I.—GENERAL PROVISIONS.

**Article 1.**—Prisons shall be under the control of the Ministry of Justice.

**Article 2.**—Prisons shall be used for the confinement of persons sentenced to penal servitude or detention.

In time of necessity a detention house may be used as a prison.

**Article 3.**—Prisoners under the age of 18 shall be confined in a juvenile prison. On their attaining the age of 18 if the remaining term of penal servitude will expire within three months, they may still be confined in such juvenile prison for the remaining term.

When the development of the mental and physical conditions of a prisoner is considered unusual, the foregoing provisions shall apply notwithstanding the age of the prisoner.

**Article 4.**—Female prisoners shall be confined in women's prisons.

**Article 5.**—When different kinds of prisons are situate in the same district, they shall be effectually separated from one another.

**Article 6.**—Inspection of prisons shall be undertaken by officials appointed by the Ministry of Justice once in every two years.

**Article 7.**—Procurators may be appointed as prison inspectors.

**Article 8.**—A prisoner, if dissatisfied with the treatment or punishment received in a prison, may, within ten days of its occurrence, appeal to the office of competent authority, or to the inspectors. But prior to a decision being made in regard to an appeal the execution of such treatment or punishment shall not be arrested.

**Article 9.**—A prisoner, if dissatisfied with the decision of the office of the competent authority or that of the inspector, may appeal to the Ministry of Justice. The decision of the Ministry of Justice shall be final.

**Article 10.**—In the matter of the treatment of prisoners and important affairs relating to prison administration, the prison superintendent shall obtain opinions from prison officers at their conference.

**Article 11.**—Permission for visiting prisons shall be granted on application, provided that such application is for the purpose of scientific research or on any other ground.

**Article 12.**—All confiscations made under the provisions of these Rules shall be used for prison charities.

**Article 13.**—The provisions applying to persons sentenced to detention are applicable to those sentenced to imprisonment.

**Article 14.**—The provisions set forth in these Rules are not applicable to military or naval prisons.

A person who ought to be kept in a military or naval prison may, upon the request of the proper authority, be confined in an ordinary prison.

#### CHAPTER II.—ADMISSION OF NEW PRISONERS

*Article 15.*—No person shall be admitted or confined in a prison unless there is the proper document required by law and recognized by the proper authority.

*Article 16.*—Permission shall not be granted on application made by a female prisoner to bring her children with her except when it is absolutely necessary.

Only children under one year old, either born in prison or outside, shall be allowed to be kept in prison with the mother. On attaining that age, they may still be allowed to remain with the mother in the prison up to the age of three years, provided that no one can be found to whom they may be handed over or no means can be found to accommodate them from outside.

*Article 18.*—Prisoners may not be admitted into and confined in a prison, if they are in any one of the following conditions :

- (1) Insane, or the confinement in prison may place them in danger of losing their lives.
- (2) Being in pregnancy for over seven months or having just given birth of a child within one month.
- (3) Having any kind of serious contagious disease.

*Article 19.*—Prisoners, who are not admissible to a prison under the provisions of the last preceding Article, may, whenever necessary, be temporarily admitted into and confined in a prison.

*Article 20.*—The body, clothes, or anything brought in by a new prisoner shall be examined and the physical condition and status of such person shall be investigated.

The provisions of the foregoing paragraph are applicable to persons who have already been confined in the prison when such examination or investigation is considered necessary.

*Article 21.*—The examination of physical condition and the taking of body measurements shall not be made upon the naked body unless absolutely necessary.

#### CHAPTER III.—IMPRISONMENT.

*Article 22.*—All prisoners shall be confined in separate single cells except those whose mental or physical conditions demand different treatment.

*Article 23.*—Any prisoner above the age of 18 after having been confined in a cell for three years shall not be kept in a single cell unless the prisoner desires it. The same regulation shall apply to a prisoner who is under the age of 18 and who has been confined in a single cell for one year.

*Article 24.*—The prison superintendent and instructors shall call on and make inquiry of all prisoners who are confined in single cells at least once in every ten days. The chief warden shall do so more frequently.

*Article 25.*—When prisoners who are confined in a common cell are ordered to work with other prisoners therein or in a workshop, regard shall be taken as to age, nature of the crime for which they

were convicted, the number of times they have committed crimes, and character, in order that they may be put in a proper place and kept properly separate.

CHAPTER IV.—DISCIPLINE AND PROTECTION.

*Article 26.*—Whenever an escape, any violent action, or suicide is attempted by a prisoner or an arrested person, instruments of restraint may be used. Such instruments are :

- (1) The strait-jacket.
- (2) Hand-cuffs.
- (3) Cords.
- (4) Chains.

*Article 27.*—An instrument of restraint shall not be employed without the order of the prison superintendent. In case of emergency an instrument may be employed at once, and the consent of the prison superintendent shall be secured afterwards.

*Article 28.*—Rifles and bayonets carried by prison officers shall not be used except on the following occasions :

- (1) When there is a dangerous or violent action or threats on the part of prisoners against the body of any person.
- (2) When prisoners refuse to surrender dangerous articles which are in their possession.
- (3) When prisoners meet together and proceed to make disturbances.
- (4) When persons from outside attempt to break into a prison for the purpose of rendering assistance to prisoners to take violent action, use threats, or make escape.
- (5) When attempting to escape prisoners make violent resistance to arrest, or disobey an order of suppression and persist in the attempt to make escape.

*Article 29.*—Immediately after the use of arms under the circumstances given in the last preceding Article, a report containing the exact facts shall be at once submitted to the Ministry of Justice.

*Article 30.*—In case of emergency, for example an Act of God or any public disturbance, the assistance of prisoners may be employed or an application may be sent to a military headquarters or police office asking for help.

*Article 31.*—If it is impossible to take any measures to avoid an emergency, for example an Act of God or any public disturbance, the prisoners may, under proper care, be escorted to a place of safety. Should it be impossible to take such a step, the prisoners may be temporarily released, but they are required to report themselves at the prison or at any police station within twenty-four hours after such release, otherwise they shall be treated as escaped prisoners in accordance with the provisions of the Criminal Code.

*Article 32.*—Prison authorities may order the arrest of any escaped prisoners within ten days of the escape.

*Article 33.*—Particulars of escapes together with personal descriptions of escaped prisoners shall be supplied to all police authorities of the place where the prison is situate and where any escaped prisoner may be expected to have passed through.



*Article 34.*—Particulars of escapes and of re-arrests shall be reported to the Ministry of Justice by the prison superintendent concerned.

#### CHAPTER V—MANUAL LABOUR.

*Article 35.*—On assigning manual labour to a prisoner due consideration shall be given to the matter of age, nature of the crime for which such prisoner was convicted, length of time, social standing, handicraft, future profession and physical condition.

*Article 36.*—Except those prisoners whose terms of imprisonment are for less than one year, the prison authorities may allow prisoners to work outside of the prison premises when necessary.

*Article 37.*—A suspension, revocation or change of labour shall not be allowed except by the order of the prison superintendent.

*Article 38.*—As the working hours shall neither exceed the maximum of ten hours nor be less than the minimum of seven hours per day, due consideration shall, when the number of working hours is assigned to a prisoner, be taken of the weather, local conditions, construction of the prison buildings and the nature of the labour.

Time expended on instruction, education, receptions, inquiries, medical inspection and physical drill shall be reckoned as part of working hours.

*Article 39.*—The amount of labour which is assigned to a prisoner shall be regulated by grades: such grades shall be based upon the provisions regulating working hours set forth in the last preceding Article and also upon the average amount of labour which an ordinary workman can properly undertake.

*Article 40.*—Prisoners shall be exempt from working on the following days:

- (1) National Holidays.
- (2) Commemoration Days.
- (3) The last two days of December.
- (4) The first three days of January.
- (5) Sunday afternoons.
- (6) Seven days on the death of a prisoner's parents or grandparents.
- (7) Any other days as may be deemed necessary.

*Article 41.*—With the exception of item 6 the provisions given in the last preceding Articles shall not apply to those days engaged in domestic work, such as cooking, wiping and cleaning floors or any other work which is required to be done.

*Article 42.*—The income derived from the labour done by prisoners shall be paid to the National Treasury.

*Article 43.*—Monetary reward may be granted to prisoners engaged in labour, but due consideration shall be taken with regard to their conduct, nature of the crime for which they were convicted, and the value of the labour.

*Article 44.*—Monetary reward granted to a prisoner sentenced to penal servitude shall not exceed 30% of the local rate of wages such as an ordinary labourer may get, and that granted to one sentenced to detention shall not exceed 50%.

*Article 45.*—If a prisoner does damage to instruments, materials or any other articles intentionally, it shall be made good by drawing upon such prisoner's monetary reward account.

In case a prisoner escapes from prison the balance due to such prisoner on the account of monetary rewards shall be partly or wholly confiscated.

*Article 46.*—Monetary rewards shall be paid to prisoners on their discharge. But when a prisoner requests that the monetary rewards shall be drawn upon for the support of his family or for the compensation of any person injured by such prisoner, if the accumulation of the savings exceeds the sum of ten dollars, the prison authority may still pay such prisoner one third of the total amount due at the time of discharge.

*Article 47.*—A prisoner who is injured or becomes ill so that he is not able to work or loses life while engaged in work shall be compensated according to the circumstances.

Whether money shall be granted or not shall be decided by a high competent authority on application of the prison superintendent.

#### CHAPTER VI.—INSTRUCTION AND EDUCATION

*Article 48.*—Instruction shall be given to all prisoners alike.

*Article 49.*—To prisoners under the age of 18 education shall be given, but to those above that age, education shall only be given either upon the request of the prisoner or when the prison authority deems it necessary.

*Article 50.*—Education of primary school standard shall be given to prisoners during twenty four hours a week ; the lessons taught shall be reading, writing, arithmetic, composition and any other necessary subject.

Prisoners who have an equal standing may be given additional assistance as required.

*Article 51.*—Prisoners may be allowed to read books, provided that they are not of such a nature as to be detrimental to prison regulations or any reformatory methods.

#### CHAPTER VII.—FEEDING OF PRISONERS AND SUPPLIES.

*Article 52.*—When prisoners are supplied with necessary food, clothing and other articles, due consideration shall be taken with regard to physical constitution and age, labour, climate as well as local conditions.

*Article 53.*—Prisoners shall be prohibited from the use of tobacco and intoxicating liquors.

*Article 54.*—Prisoners shall wear convict garments of a gray colour.

With the exception of the convict garments, clothes and bedding may be provided by a prisoner if such clothes and bedding are not of such a nature as to be detrimental to the sanitation and regulations of the prison.

*Article 55.*—During the bitterly cold weather, heating may be supplied to the cells and other prison buildings. The time for the heating of a prison hospital shall be fixed by the prison superintendent.

*Article 56.*—Female prisoners who take their children with them may provide their own food, clothing and any other necessities.

#### CHAPTER VIII.—SANITATION AND MEDICAL TREATMENT

*Article 57.*—Prison premises shall be kept clean and in a sanitary condition. Cells, clothing, water closets, buckets and all utensils shall be cleaned or washed at regular intervals.

*Article 58.*—Prisoners shall be ordered to take baths regularly. The number of times for bathing shall be fixed by the prison superintendent in accordance with the nature of the labour which a prisoner is ordered to do and any other conditions, but it shall not be less than once in every three days from April to September (inclusive), and not less than once each week from October to March (inclusive).

*Article 59.*—A prisoner shall take physical exercise for half an hour each day, unless it is impossible for such prisoner to do so. But this does not apply to a prisoner whose labour is of such a nature that it renders physical exercise unnecessary.

*Article 60.*—Medical treatment must be at once given to prisoners who become ill. Serious cases shall be sent to a sick ward.

*Article 61.*—Any prisoners who has contracted a contagious disease shall be kept in isolation. No one shall be allowed to get near such prisoner except nurses.

*Article 62.*—Articles and utensils after being used by a prisoner infected with a contagious disease shall be disinfected or sterilised before they are used by any other prisoner.

*Article 63.*—Whenever there is an epidemic necessary restrictions may be placed upon any person coming in or going out of the prison and also upon articles sent to prisoners.

*Article 64.*—A prisoner who is seriously ill may, with the consent of the prison superintendent, secure the attendance of a medical doctor from outside at the prisoner's own expenses.

*Article 65.*—For the treatment of special diseases, a prison physician may secure the assistance of a specialist.

This regulation also applies to the treatment of midwifery cases.

*Article 66.*—A female prisoner who is pregnant or who has just given birth to a child, and any prisoner who is infirm or threatened with a relapse shall be considered as a prisoner suffering from sickness.

#### CHAPTER IX.—VISITS AND CORRESPONDENCE.

*Article 67.*—A prisoner shall only be allowed to receive as visitors the members of the prisoner's own family, but if there is any special reason, persons outside of the family may also be allowed to visit.

*Article 68.*—A prisoner sentenced to detention is allowed to receive visitors once every ten days, but one sentenced to penal servitude, once every month. The duration of an interview shall not be more than thirty minutes, unless the circumstance which warrants an interview is considered by the prison superintendent to justify a longer interview.

*Article 69.*—An interview shall be conducted under the supervision of prison officers. If there is collusion or if anything which



violates prison regulations is discovered, any further interview shall not be allowed.

*Article 70.*—A prisoner shall only be allowed to correspond with members of the prisoner's own family, but when special reasons justify it such prisoner may be allowed to correspond with persons other than members of the family.

*Article 71.*—A prisoner sentenced to detention is allowed to carry on correspondence with persons once every ten days, but one sentenced to penal servitude, once every month. This restriction does not apply, when a prison superintendent considers it necessary that more freedom should be given to the prisoner.

*Article 72.*—Letters sent or received by a prisoner shall be inspected by the prison superintendent. If any letter is of collusive nature or a violation of any prison regulation, its delivery shall not be allowed.

*Article 73.*—Postage and other expenses for sending private letters shall be paid by the sender, but the cost of sending other letters shall be borne by the prison.

#### CHAPTER X.—DEPOSIT OF PRISONERS' EFFECTS.

*Article 74.*—The personal effects of a prisoner shall be inspected for the purpose of safe-keeping.

Worthless articles or articles which could not be preserved shall not be taken into the depository.

When the owner of any articles referred to in the foregoing paragraph is able to find no way for its disposal, it may be abandoned or destroyed.

*Article 75.*—Permission may be given at the discretion of the prison officer to a prisoner who requests that any article in safe-keeping be disposed of for the benefit of the prisoner's family or for any other proper use to so dispose of such article.

*Article 76.*—A prisoner may be allowed to accept any article sent from outside, provided that the sending of such article is not inconsistent with the prison regulations.

Whenever any article is considered objectionable or if the name of the sender is not clearly indicated or if any article is rejected by a prisoner such article shall either be confiscated or destroyed. This provision shall also apply to any article brought into a prison privately and without permission of the prison authority.

*Article 77.*—All articles deposited for safe-keeping shall be restored to the prisoner upon the prisoner's discharge.

*Article 78.*—Articles or money left by a prisoner who has died in prison shall on application be handed over to the family of the deceased.

After the expiration of one year from the death of a prisoner, any article left by a deceased prisoner as referred to in the foregoing paragraph shall be handed over to the National Treasury if no applicant appears. This provision shall apply to articles of an escaped prisoner who has not been apprehended within one year after escape.

#### CHAPTER XI.—REWARDS AND PUNISHMENTS.

*Article 79.*—Rewards and punishments shall be given under the direction of the prison superintendent.

*Article 80.*—A prisoner strictly obeying the regulations of the prison shall be rewarded in one of the following ways :

- (1) by being given one additional chance to receive visitors and to carry on correspondence with others as provided for in these Rules.
- (2) by being given extra monetary reward not to exceed one dollar per month.
- (3) by being given additional food for not more than three times in every ten days, provided that the cost of such additional food shall not be more than ten cents each time.

*Article 81.*—A prisoner who renders any of the following services shall receive a reward of a sum of money not to exceed twenty dollars.

- (1) Revealing privately another prisoner's plan of escape by violence or a prisoner's immediate escape by violence.
- (2) Saving life, or arresting an escaping prisoner.
- (3) Showing merit at a time of a calamity due to an Act of God or public disturbances, or when a contagious disease is prevealed.

*Article 82.*—Prisoners who violate the prison regulations shall be punished by the following :

- (1) Reprimand.
- (2) Suspension of the privileges of writing or receiving letters, receiving visitors and reading books or other periodicals,
- (3) Reduction of food by one-fifth to three-fifths of the amount supplied for the regular meal.
- (4) Suspension of physical exercise.
- (5) Confinement in dark cell.
- (6) Reduction of monetary rewards.

The punishments referred to in the foregoing paragraph may be inflicted at one and the same time : provided that the punishments defined in items 3 and 4 may not be continued for more than seven days, and that in item 5 for more than three days.

Items 2-5 inclusive shall not be inflicted upon prisoners under 18 years of age.

*Article 83.*—The inflicting of any of these punishments may be suspended in case a prisoner is ill or if there is any other special circumstance requiring such suspension.

When a prisoner has shown signs of repentance, any such punishment shall no longer be inflicted.

## CHAPTER XII.—PARDON AND CONDITIONAL RELEASE.

*Article 84.*—A prison superintendent may, on behalf of a prisoner, make application for pardon.

Such application shall be submitted to the Ministry of Justice by the procuratorate through whose order the prisoner is serving the sentence.

*Article 85.*—The application for pardon shall be accompanied by a report of the prisoner's conduct during the time of the prisoner's serving of sentence in prison.

*Article 86.*—During the term of a prisoner's conditional release the provisions referred to in Article 84 shall apply.

*Article 87.*—Whenever a prisoner has been kept in the prison for a time long enough for an application for conditional release to be made, if in the opinion of the prison superintendent there is insufficient evidence of the prisoner's repentance or if no approval of release has been obtained by a majority vote of the prison officers at a conference of such officers, no application for conditional release shall be made.

*Article 88.*—An application for conditional release shall be submitted to the Ministry of Justice together with a document signed by the majority of the prison officers as well as a report showing the conduct of the prisoner during the time of his serving the sentence in prison.

*Article 89.*—A prisoner who is conditionally released shall during the term of such release observe the following :

- (1) He must be engaged in some honest occupation and behave himself in an honourable manner.
- (2) He shall be under the supervision of the prison authority, but such supervision may be entrusted to a police department or some competent person or persons.
- (3) He must get the consent of his supervisor when he changes his residence or takes a journey of more than ten days.

*Article 90.*—If it comes to the knowledge of the prison superintendent that a prisoner who has received a conditional release ought to be dealt with in accordance with the provisions of Article 67 of the Criminal Code, a written opinion to that effect shall be submitted to the Ministry of Justice.

*Article 91.*—If in the opinion of the prison superintendent a prisoner has violated the provisions of Article 89 of these Rules, a report shall be sent to the Ministry of Justice, and such conditional release shall at once be suspended.

### CHAPTER XIII.—RELEASE.

*Article 92.*—Any prisoner entitled to release shall be set free by the prison superintendent.

*Article 93.*—A prisoner shall be set free on the day mentioned in the order for pardon or conditional release or on the morning of the day following the expiration of the term of imprisonment as the case may be.

*Article 94.*—The release of a prisoner who has been pardoned or is conditionally released shall be effected in due form. A certificate of conditional release shall be given to a prisoner who is conditionally released.

*Article 95.*—In the case of a release on the expiration of the term of imprisonment, a prisoner shall be confined in a single cell for at least three days prior to the release.

*Article 96.*—Travelling expenses and clothes shall, at the discretion of the prison superintendent, be supplied to a prisoner on the release of such prisoner.

*Article 97.*—A prisoner who is ill at the time of release may, if necessary, be received at the prison hospital for medical treatment.



## CHAPTER XIV.—DEATH.

*Article 98.*—In case of the death of a prisoner, the corpse of the deceased shall be inspected by the prison superintendent and with a procurator jointly.

*Article 99.*—A record of an illness with full details, such as the name of the disease, the cause of the illness, the name of the deceased, the cause and the date of death, shall be made by the prison physician who shall attach thereto signature and seal.

*Article 100.*—The family or persons related to a deceased prisoner shall be notified immediately with the name of the disease, the cause of the illness and the date of death; and a report to that effect shall be sent to the Ministry of Justice.

*Article 101.*—Permission shall, on application, be granted to the family or to persons related to the deceased to take away the corpse.

*Article 102.*—In the absence of the application referred to in the foregoing Article, the corpse of the deceased shall be buried twenty four hours after death has taken place.

A wooden tablet bearing the name of the deceased and the date of death shall be erected at the place where the deceased is buried.

*Article 103.*—These Rules shall come into force on the day of promulgation.

## PROVISIONAL REGULATIONS GOVERNING THE RELEASE OF PRISONERS ON BAIL

(Promulgated by Order No. 36 of the Ministry of Justice on  
December 7, 1920 ; and by Presidential Mandate  
No. 129 on December 8, 1920.)

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—Whenever the number of prisoners in an old or new prison is greater than the fixed estimated number, or whenever any such prison is overcrowded, prisoners may be released on bail in accordance with the provisions of these Regulations.

**Article 2.**—A prisoner who has been sentenced to imprisonment of the third, fourth or fifth degree may be released on bail provided that such prisoner has served more than half of the term of his imprisonment in the execution of the sentence ; provided that the following conditions are fulfilled namely that :

- (1) the prisoner has not previously been sentenced to any punishment severer than detention.
- (2) if the prisoner has previously been sentenced to detention at least three years have elapsed since the execution or remission of the sentence ; or if the prisoner has previously been sentenced to imprisonment for a period of the third, fourth or fifth degree, at least seven years have elapsed since the execution or remission of the sentence.
- (3) the prisoner has either shown good behaviour, or given evidence of repentance, or rendered meritorious services to the prison during his term of sentence in the execution of punishment.
- (4) the prisoner has a fixed abode and regular occupation.
- (5) there are relatives or friends of the prisoner who will supervise his conduct during the period of release on bail.

The provision of the last preceding section shall apply to fines in lieu of imprisonment with the exception of those prisoners whose terms of imprisonment are less than two months.

**Article 3.**—Prisoners who have committed any of the offences defined in the following articles cannot be released on bail. Those who have committed an act of attempt or those on whom punishment is to be inflicted in accordance with the provisions of such articles shall be treated in the same manner :

- (1) Article 103.
- (2) Article 113.
- (3) Article 120, Section 3 of Article 122, and Article 123.
- (4) Article 140 and 141.
- (5) Article 168, Section 1 of Articles 168, 169 and 170 ; Articles 172 and 174.
- (6) Article 187 ; Sections 1 and 2 of Article 188 ; and Article 193.

- (7) Officials who have committed the offence of Article 244.
- (8) Article 259, Section 2 ; and Article 261.
- (9) Articles 266, 268, 270 or those who are selling the seeds of poppy and those who have committed any of the offences of Articles 1, 3 and 4 of the Law of Punishments for selling morphine.
- (10) Articles 283 and 284.
- (11) Article 314, Section 3.
- (12) Article 349, Section 1 ; Article 350, Section 2 ; and Article 351, Section 2.
- (13) Article 370.

Those, who have committed any of the offences defined in the above mentioned articles, the circumstances of the wrongful act being more serious than those mentioned in the article, and have been sentenced to an imprisonment for a period of the second or higher degree, cannot be released on bail ; provided that the punishment has already been reduced to the third or a lower degree.

*Article 4.*—During the period of release on bail, every two days shall be reckoned as one day of imprisonment.

The termination of the period of release on bail is the termination of the period in execution of punishment.

*Article 5.*—Prisoners who have been released on bail are still considered to be prisoners, but whenever such release on bail is revoked, the number of days of the period of such release on bail shall not be deducted from the period of imprisonment.

*Article 6.*—Release on bail shall be revoked whenever a prisoner does any of the following acts during the period of release on bail :

- (1) Where, during the period of release on bail, the prisoner commits any offence for which he is sentenced to a punishment not lighter than detention.
- (2) Where the prisoner is sentenced to a punishment not lighter than detention for an offence committed before such release on bail.
- (3) When after release on bail has been granted it is discovered that the prisoner has not fulfilled the conditions contained in Article 2 of these Regulations.
- (4) Where the prisoner has not complied with the conditions prescribed for the period of release on bail.
- (5) Where, during the period of release on bail, the prisoner unreasonably finds fault with the aggrieved party, complainant, or any person who has exposed or given information whereby he was sentenced to imprisonment.
- (6) Where the prisoner has not properly behaved himself and has been reported to the Procuratorate by the administrative office of people of the district ; provided that the Procuratorate considered it necessary to revoke such release on bail.

Prisoners, during the period of release on bail, shall fulfil all the requirements contained in the Regulations Governing Conditional Release.

*Article 7.*—When a prisoner is released on bail, the warden in charge of the district prison concerned shall make a report containing



the name, age, place of origin, address, social condition, occupation, facts of the case, the offence, nature of the sentence, term of imprisonment, period already served, period still to be served and any other circumstance connected with the execution of the sentence, of any prisoner so released, to the District Magistrate to be submitted to the High Procuratorate of the district for inspection. After inspection the report shall be submitted to the Ministry of Justice for approval to be dealt with ; provided that any such matter in connection with a new prison shall be reported by the Superintendent directly to the High Procuratorate, through which such report, after approval, shall be submitted to the Ministry of Justice for final approval. Notification shall also be given to the Local Procuratorate.

*Article 8.*—Whenever a prisoner, during the period of release on bail, does any of the acts specified in Article 6, the Procuratorate of the district may take back such prisoner and send him to the prison for execution of punishment, and report to the Ministry of Justice immediately.

*Article 9.*—The Procuratorate of a district shall report to the Ministry of Justice any of the following matters together with all relevant facts :

- (1) The period of release on bail terminates.
- (2) Prisoners who during the period of release on bail have escaped.
- (3) Prisoners who during the period of release on bail have died.

*Article 10.*—All other Regulations concerning the clearance of prisons in the provinces shall not be valid after the enforcement of these Regulations.

*Article 11.*—These Regulations shall come into force on the day of promulgation.

## RULES RELATING TO CONTROL IN CONDITIONAL RELEASE

(Promulgated by Ministerial Order No. 47 of the Ministry of Justice on February 15, 1913)

*Translated and published by the Commission on Extraterritoriality, Peking.*

**Article 1.**—A person conditionally released shall be subject to the supervision of the police office of the place where he resides.

**Article 2.**—The prison shall, in releasing a prisoner conditionally, state in the certificate of conditional release the period within which such prisoner shall arrive at the place where he is to reside.

A person conditionally released shall, within the period prescribed in the preceding paragraph, present his certificate to the proper supervising police office for inspection and stamping.

If the journey should extend over several days, he shall act as above with regard to the police office of the place where he sojourns.

**Article 3.**—If a person conditionally released be unable to conform to the provisions of Article 2 because of natural catastrophe, sickness or any other reason, he shall report the reason to the police office of the place where he sojourns and ask for a certificate as proof of the fact.

Such certificate shall be presented to the supervising police office for stamping.

**Article 4.**—The prison shall, on the issue of a certificate of conditional release, report the reasons for such release to the following organs :

- (1) The proper District Procuratorate of the place where the person conditionally released is to reside.
- (2) The Procuratorate at the instance of which such person was convicted.
- (3) The police office of the place where such person is to reside.

**Article 5.**—If a person conditionally released wishes to travel for a period of between three and ten days, he shall state the cause, the place where and the period of time within which he wishes to travel.

**Article 6.**—If a person conditionally released wishes to move or travel for a period exceeding ten days, he shall state to the supervising police office the cause, the place to which he wishes to move, or the district and the period of time within which he wishes to travel ; and shall ask for permission.

The supervising police office shall, in granting such permission, hand to such person a travelling certificate ; provided that this provision shall not apply if the moving takes place within the district of the supervising police office.

The provisions of Articles 2 and 3 shall apply to the circumstances of the preceding paragraph.

*Article 7.*—The supervising police office shall, after having permitted such person to move, report the cause to the organs referred to in sub-divisions (1) and (2) of Article 4, the proper District Procuratorate and the police office of the place to which such person wishes to move.

Under the above circumstances, all documents relating to such person shall, at the same time, be sent to the new supervising police office.

*Article 8.*—If a person conditionally released wishes to travel abroad, he shall state the cause and the place and period of time of travelling ; and shall, through the supervising police office and the prison which issued the certificate of conditional release, petition the Minister of Justice for permission.

The supervising police office and the prison shall investigate the facts and state their opinion.

If the permission referred to in the first paragraph of this Article is granted, the provisions of sub-divisions (1) and (2) of Article 4 and the second and third paragraphs of Article 6 shall be complied with.

*Article 9.*—When the person conditionally released returns to his place of residence after travel, he shall present himself in the supervising police office and surrender the travelling certificate.

*Article 10.*—A person conditionally released shall submit to the supervising police office his plans relative to vocation and livelihood.

If such person is within the care of any one, the plans above referred to shall bear the latter's signature.

*Article 11.*—A person conditionally released shall, in accordance with the provisions of Article 10, present himself in the supervising police office once a month and make a report of his condition.

If a person conditionally released sojourns, while travelling, in a place for more than a month, he shall present himself in the police office of such place and make the report above referred to. Such police office shall send to the supervising police office a summary of such report.

*Article 12.*—The supervising police office shall see that the person conditionally released pursues a proper vocation and conducts himself properly ; and may issue proper orders and instructions.

*Article 13.*—The supervising police office shall, once every six months, make to the organs referred to in sub-divisions (1) and (2) of Article 4 and the prison which issued the certificate of conditional release a report of the investigations with reference to the conduct of the person conditionally released, the kind of vocation he pursues, the matter of his diligence, and his relatives.

*Article 14.*—The supervision of a person conditionally released may, at the discretion of the chief official of the prison issuing the certificate of conditional release, be entrusted to any of the following persons :

- (1) A proper relative or family friend.
- (2) A person who undertakes the work of caring after persons discharged from prison.
- (3) An officer of any other philanthropic body.



A person entrusted with the supervision above referred to shall make a report of the matter to the supervising police office at the end of each month in accordance with the provisions of Article 13.

*Article 15.*—If the procuratorate or police office considers the person conditionally released to be within the provisions of Article 67 of the Provisional Criminal Code, he shall submit his opinion to the Minister of Justice.

Such opinion shall be submitted through the proper District Court of the place where the person conditionally released is residing.

*Article 16.*—If the Minister of Justice revokes the conditional release, the proper District or Local Procuratorate of the place where the person conditionally released sojourns or resides or the prison which issued the certificate of conditional release shall be notified and ordered to give effect to the revocation.

In the above circumstances, the certificate of conditional release shall be surrendered.

*Article 17.*—In the circumstances referred to in Article 16, the procuratorate or prison shall notify all the organs referred to in Article 4.

*Article 18.*—If a person whose conditional release is revoked is not in the prison, the procuratorate may issue a warrant of arrest.

*Article 19.*—If a person conditionally released dies, the supervising police office shall make a report to the organs referred to in sub-divisions (1) and (2) of Article 4 and the prison which issued the certificate of conditional release.

The prison which receives the aforesaid report shall send a summary of such report to the Minister of Justice.

*Article 20.*—If, for the purpose of supervision, it is necessary for a police officer to enter the residence of a person conditionally released, he shall not wear police uniform.

*Article 21.*—The provisions of these Rules shall come into force on the day of promulgation.

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*For Laws, Ordinances and Regulations of the Republic of China  
included in Part III of this Volume, see Table of Contents.*

<b>ABBREVIATIONS :</b> <i>i.f.</i> —in force.	<i>F.M.C.</i> —French Mixed Court
<i>abr.</i> —abrogated	<i>S.M.C.</i> } <i>Municipal Council</i>
	<i>Mun. Coun.</i> }
<i>proj.</i> —project.	<i>S.M.P.</i> — <i>S'hai Municipal Police.</i>
<i>M.C.</i> —Mixed Court.	<i>Ch.</i> —Chinese.
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## ERRATA.

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### Page

23, 43,

50, 208.—Footnote—read “*Shanghai: Its Mixed Court and Council*”  
—1842-1924” instead of “1844-1924”.

36.—Line 6—read “*nor*” instead of “not”.

56.—Footnote—read “*for the period of 1908-1924*” instead of  
“1908-1921”.

135.—Margin note—read “*Diplomatic Body's Note, June 6th, 1925.*” instead of “June 6th, 1926”.

141.—Footnote—read “*July 18th, 1854*” instead of July 8th, 1854”.

161.—Margin note—read “*Chinese Advisory Committee*” instead  
of “China Advisory Committee”.

Margin note—read “*Classification of Offences*” instead of  
“Classification of Offenders”.







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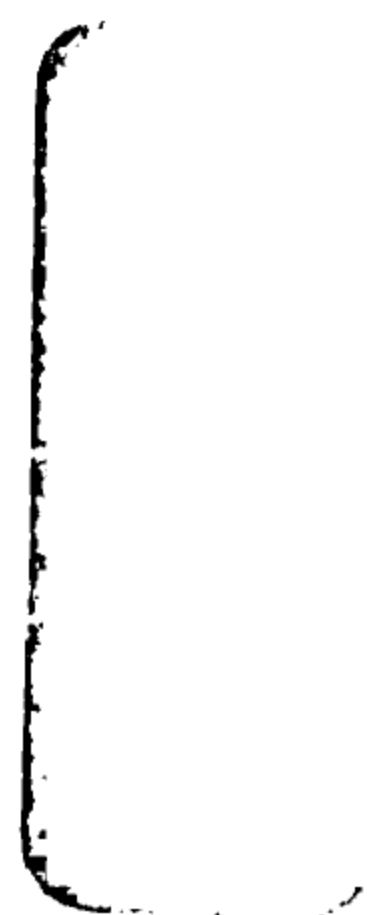
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